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The Proceedings, Examination, Tryal and HORRID MURDER

OF

Col. Eusebius Andrewe.

By *John Bradshaw*, President of the pretended High-Court of Justice, and others of the same Court.

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[illegible] Andrewe [illegible] an Eye witness to all the [illegible] ings.

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ATRIUM

A True

RELATION

OF

The Proceedings, Examination, Tryal, and Horrid Murder of Collonel *Eusebius Andrewe*.

ON Munday the 24*th*. of *March* 1649. Col. *Andrewe*, was taken prisoner at *Gravesend* by Major *Parker*, and by a Troop of horse that night conveyed to the *George* in Kings street *Westminster*.

The next day, he was convented before the Lord President *Bradshaw*, Sir *Henry Mildmay* Knight, & *Thomas Scot* Esquire, three of the Members of State, delegated by the Council for the taking of the examination of him, and of Sir *Henry Chichley* Knight, Doctor *Henry Edwards*, and Mr. *Clark*, casually found in the same Inn with Mr. *Andrewe*.

Those Gent. examined him so punctually to every action and circumstance that had passed on his part since he took up Armes, and especially since the render of *Worcester*, and his return from thence to *London*; and also concerning his several Lodgings, Names, Acquaintances, Removes, Abodes in the Countrey, correspondencies by Letters, and interest in places and persons, as if they had kept a Diary for him. Which considered, and that Sir *John Gell* Baronet, Major *Barnard*, Captain *Smith*, Captain *Benson*, and Captain *Ashley*, (with whom he had the last and most questionable correspondence,) were all in custody, he found himself to be betrayed, but could not at present guess by whom, but well saw that he had better be fair in his confessi-

on, then to deny what he ſaw by the perfectneſs of his examiners, would be proved againſt him, by the diſcoverie of ſome of thoſe formerly ſecured, and examined before his comming up; and was reſolved to beare the worſe, and not ſo much to ſhame himſelf, or his matter, as to deny things evident, or eaſily evidenceable, but rather to caſt himſelf upon God, and come off as well as he could with a truth in his mouth, as the beſt way to meet death without ſhame.

In his Anſwers, he would have bin circumſtantial, but was kept cloſe to the Queſtion; at his departure he deſired that he might ſet down his own Narrative, according to his own ſence, which was granted him to prepare, and to ſend or bring to them as there was opportunity. And having totally, as much as in him lay, excuſed (as was juſt for him to do) his fellow priſoners, as to any thing related to his Delinquency, he was with them committed to the Gatehouſe.

Wednesday following, he was reconvented and reexamined.

On Friday, he was again convented, and delivered in his Narrative to the Lord Preſident, and the Houſe by buſineſs happenning detaining the other two examiners, he was by the Preſident returned.

On Saturday, he was recalled, and there as at all times before, uſed and treated with civility, and no little preſſure to diſcover ſome great perſons, his ſuppoſed confederates; the aime, as he conjectur'd (and that upon ſtrong inference, and ſome expreſſions) was at Sir *Guy Palmes*, Sir *John Curſon*, and Sir *Thomas Whitmore &c.* But he accounted it a great bleſſing in his inhappineſs, that his misfortune was not cumulative, nor fatal to any his friends or familiars, who yet knew nothing of the reaſon of his Impriſonment, more then for what they were beholding to common fame, and had no ſhare in his fault, (ſuch as it was) and he was glad that he could as well engroſs the ſuffering to himſelf.

On Sunday next, he was called out of his bed, and by two Meſſengers, his Keeper, and his Man, brought into a boat at Kings-bridg at *Weſtminſter*, and thence carried to the Tower. The warrant which at the Lievtenants houſe was read, imported, That he was committed cloſe priſoner for high treaſon, in endeavouring

vouring to subvert the present Goverment, &c. To be kept till delivered by Law.

He was designed by the Lieutenant, Collonel *Francis West*, to a prison-lodging; but having notified to him his quality, he was put into the custody of Mr. *Richard Standon*, one of the Yeomen Warders, in his house, equally convenient with the best in the Tower. At his coming to the Tower he had but two shillings in his purse, and supposing he should have been provided for diet as the States prisoner, he sent to the Lieutenant, to know what he would order for him? who returned, That if he had money he might have what he would; but at his provision nothing.

His Keeper was upon his delivery to his charge, commanded to keep him safe, and if he escaped threatened to be hang'd, and a centinel set immediatly at the dore, and that day two Gentlewomen comming to see him, were all night imprisoned in the Round-house, and next day carried to the Council of State, and strictly examined.

His Waterman that week brought him some money, for which, and some affectionate words spoken of him, he was convented before the President, examined, rebuked, and dismissed; and a centinel set at the window of M. *Andrews* Lodging, that he might not speak to any without.

The Narrative follows.

To the Right Honourable the Council of State.

The humble Narrative of Collonel Euſebius Andrewe, *as to the Queſtions and matters of charge whereupon he was examined before the Preſident,* Sir Henry Mildmay, *and* Thomas Scot, *Eſquire, in that behalf delegated by the Council the* 27th *day of* March 1650.

May it pleaſe your Lordſhips.

BEing unfortunatley, and by a treacherous practice ſeduced into an action which renders me obnoctious to your Lordſhips diſpleaſure and Juſtice, and thereupon convented and brought to examination, I aſſured your Lordſhips delegates, that I came with a reſolution to deal candidly, and not to preſerve my life by framing a Lye, or by denying a Truth. The ſame purpoſe I ſtill retein, caſting my ſelf wholly at your Lordſhips feet; humbly praying leave, that while I anſwer to matter of fact, I may be permitted to cloth it with the pertinent circumſtances; That while the one layes me liable to your Juſtice, the other may bring me within the capacity of your mercy; which in caſe it be afforded, I ſhall embrace with all humility and thankfullneſs. And if denied, I ſhall find cauſe within my boſome to juſtifie God Almighty in his permiſſion of my ruine, and I hope Charity enough to forgive whoſoever have, or ſhall be inſtrumental to it, and bear the gurdon of my folly with a ſober confidence of Gods reſerved favour.

My Engagement for his late Majeſty began ſoon after *Hillary Terme* 1642. and continued until the ſurrender of *Worceſter* in *July* 1645.

I have omitted to make my compoſition, not having a conſiderable, and not willing to own an inconſiderable eſtate.

I have not taken the Proteſtation, Solemn League and Covenant, Negative Oath, nor ſubſcribed the preſent engagement.

John

John Barnard, sometimes Major under me, and by reason of his good parts and sober demeanour, being in my good opinion, at my return to a private practice in my calling for my necessary support, frequently visited me, and imparted to me such occurrences as he met abroad in discourse, and did often intimate the discontents of the Reformades, the factions of the Levellers and Agitators, and the proceeding of a certain Committee, or select Council of Officers, of which Col. *Cooke* was cheif, and himself their Clerk, upon a printed charge against some for oppression, and against others for conceal'd delinquencie, to the penning, promoting or counselling in which, I was originally a stranger, * nor did ever interest my self therein further then the hearing his discourse, neither did ever mediatly or immediatly meddle with any of the persons or actions of the Reformades, Levellers, or Agitators upon any his discourses.

* This is mentioned because the Speaker & his Brother hold me in jealousie and were both accused by that printed paper.

* About Trinity term last, Major *Barnard* obtruded to my acquaintance one Captain *Holmes*, who soon after brought with him one *John Benson*, (who pretended to have had command under Sir *John Gell*, was anciently his servant, and until this time his dependant,) who uninvited frequently produced to me transcripts of Letters, (with the coppying of which he pretended to be entrusted under Mr. *Rushworth*) which did appear to purport the occurrences in reference to the affaires of the State, and their concernments at home and abroad, from their several agents; which I only read in his sight, and immediatly delivered them back, he pretending that he was to carry them to Mr. *Thomas Bushell* to be transmitted over sea.

* This error in time, as some others both of substance and circumstance, are rectified upon better memory by some following papers sent to the Lord President M. Bush though discovered by Benson, & first upon my examination and after by my Ner. mentioned, yet was not apprehended, which gave me occasion to believe him a dissemblor.

Captain *Holmes*, and *John Benson*, in their discourses did insinuate that their interest was great in the Reformades, and that by them great advantage would upon any importunity be done for the Royal partie, and magnified Sir *John Gells* interest in his countrey, his reluctance at what he had done in the Parliaments service, & his willingness to expiate his former fault with a beneficial service to the Prince. And Major *Barnard* propounded, that a former design in the time of the warr laid by me for the taking of the *Isle* of *Ely*, might by their help, and the conjuncture of some strength to be raised by Sir *John Gell*, then to me a stranger, and by *Holmes* and *Benson*, pretended to be willing and

and able to raiſe conſiderable numbers, be revived and executed; and thereupon it was concluded, that I ſhould with *Benſon* trie who in *Cambridgeſhire* would engage in it, and then ride down to Sir *John Gell*, to ſee if his ſtrength and purpoſe were ſuch as pretended; and this not to be executed but upon the contingency of ſucceſſes in *Ireland*, and *Scotland*, was let fall as ſoon as conceived.

* This relation is rectified by another paper being miſtaken in time &c.

About the middle of *December*, Captain *Holmes* brought me inſtructions, to draw a petition for Sir *John Gell*, for the getting of his arrears, which I drew accordingly, and not long after, I was invited to give him meeting, till then having not ſeen or correſponded with him, and received an invitation and inſtruction to arbitrate between him and his Lady, with Sir *Thomas Preſtwich*, and amongſt other diſcourſes, Sir *John Gell* did take notice of his irrequital for his ſervice, and his loſſes, and the miſapplication of his, and other ſervices, to an end they intended not, & that he deſired to be ſo underſtood, and when opportunity ſhould be, to be ſo repreſented to the Prince; and did intimate, that if ever he took up armes again, it ſhould be for the Prince: and at ſeveral other ſubſequent meetings, the diſcourſes were general, and much to this purpoſe, but no particular deſign laid or contrived.

This had been confeſſed by Benſon and all particularly queſtioned of me.

The time limited by the Act for departure, &c. being neer expired, and my ſelf being purpoſed to withdraw into the countrey, vntil the ſummer voyage into ſome of the Plantations, and to that purpoſe being in treaty with Sir *Edmond Plowden*, about the conditions of *New Albion* plantation, of which he writes himſelf Count Palatine, and Proprietor; on Saturday 16 *Martii*, I was unexpectedly viſited by Major *Barnard*, and *John Benſon*, and they enquiring my reſolution concerning my leaving the Town in obedience to the Act; I ſignified my purpoſe to go to *New Albion*, or to *Virginia*; upon which they took opportunity to make propoſal to me in effect, that they had a conſiderable deſign laid, and friends and money to ſet on foot and back it, and that I ſhould have two hundred pounds in hand, and power to draw money by bills of exchange for what more ſhould be neceſſary for my ſupports, and manage of what ſhould concern the ſaid deſign in *Holland*, if I would undertake to go over,

Bernard & Benſons propoſition.

and

and promote it to the Prince: and they did then in general termes signifie, that it was an easy matter, especially, the Cavaliers going out of the Town, by correspondence in all counties, to surprise the horse of the army in their several quarters; and did intimate, that Major *Barnard* had a design in a draught, which as I remember he produced, and I believe was concerning such surprisal, but was not read, but referred to further time of consideration. My Answer was, That if the money were ready I would divert my former purpose from any Plantation, & entertain the motion. My Answer.

Sunday morning, they came again and informed me, that several persons of quality and fortune in *Kent*, *Buckingham*, and *Dorset*, were, or would then presently come up neer the Town, and would joyn in an engagement, and advance moneys, and that Sir *John Gell* would also engage, and might with a word of his mouth bring in his friends, and Sir *Andrew Kniveton*, Sir *Guy Palmes*, and *Mr. Fitzherbert*, and a fourth person, whose name I remember not; and therefore desired me to draw an engagement, (which I did in a loose paper, after the sence by them or one of them, the said *Barnard*, or *Benson*, instructed) and to move Sir *John Gell* to joyn in such an engagement, but did not press me to joyn in the same at that present, for the encouraging of their before mentioned friends, amongst whom, I remember only these Sir-names *Boyes*, *Thatch*, *Baker*, all to me absolute strangers.

That day I spake with Sir *John Gell*, and acquainted him with their offer and proposal to me, and desire from him. He answered, That he would not meddle with acting in that design (which he took upon him to be acquainted withal,) for which he was as then in no capacity, nor would be engaged under his hand & seal, to be bound to be any future action for them, for that *Benson* was a fellow given to drink, and lavish of his tongue; but entrusted me that if I went over upon this occasion, to possesse the Prince with a good opinion of him, and that he would do nothing against him; & if he were at all in command, he would be so to his advantage, or to that effect. Sir John G.ll.

I returned to them Sir *John Gells* answer, with which they were not, or seemed not altogether unsatisfied, and appointed on Munday five of the clock, that the persons of the Counties of *Kent*, *Buc-*

Buckingham, and *Dorſet*, or ſome of each Countie from the reſt, ſhould give meeting at the Three Cranes at the Savoy gate, and be all ſatisfied in the Deſign, and agree their reſpective proportions of monyes to be paid in preſent, and raiſed for the future; deſiring me to take care to move, that they might be alſo provided for to be able to hold intelligence, and ride about from place to place to lay the deſign.

At the time I came, and Major *Barnard* produced two letters, one ſubſcribed by *Smith*, another by *Thatcher*, purporting, that the *Kentiſh* Gentlemen were come as farr as *Rocheſter*, and would that night be within twelve miles of *London*, and lie there all day, and then in the evening, on Tueſday by eight of the clock, would at any place give meeting to himſelf, and his Collonel; and that they had ſent an eſpeciall guide to bring *Barnard* to them that night, whether he was inſtantly deſired to repaire and that they durſt come no nearer in feare of the watchfullneſs of Collonel *Blunt*; and that two hundred and fifty pounds were ready to be laid down to perform their undertaking. No man of any Countie giving any meeting according to the firſt appointment at the Cranes, but the ſaid *Barnard*, and *Benſon*, and one who calls himſelf Captain *Aſhley*, only known in face to me, who pretended to be privy and knowing of the truth of all what their former diſcourſe and theſe letters tended to; and *Barnard* pretending to go inſtantly to horſe from *Weſtminſter*, I brought him and *Benſon*, to the water ſide, and in the walk they importun'd me again to obtain Sir *John Gells* ſignature, and ſeale to the engagement, which *Benſon* had then ready engroſſed, and that I would go perſently to *Weſtminſter* with them about it; which I refuſed, and told them, that I was able to ſatisfie any man of quallity, diſcretion, and ſecreſie, concerning Sir *Johns* reallity, though not actually engaged; and ſo left them.

That night about eight of the clock, one *Smith*, to me (till then) an abſolute ſtranger, and Captain *Aſhley* came to me, and brought me a letter from Major *Barnard*, highly reproving me, and Sir *John Gell* of backwardneſs, in witholding our own hands from the engagement, and that we intended our own honours upon their dangers, without giving them aſſurance of our ſecreſie and conſtancy; and that unleſs the engagement were ſubſcribed

by

b Sir *John Gell*, his *Kentish* friends would not proceed further, aywas known to *Mr. Smith*, who took upon him to ceme as from them for satisfaction in that point. And in answer, I under a vow of secresie told him, that I was satisfied concerning Sir *John Gell*, and presume, that if any Gentleman of quallity in whose Judgment the rest would abide, should address to Sir *John*, that under an Oath of secresie he would satisfie him, but durst not trust *Benson*, and *Barnard* was to him a stranger; with this they departed, assuring me that they thought no more would be expected from Sir *John*, and that they would, or one of them, away that night to the company, and that the next day being Tuesday the money should be paid at the *Palsgraves head*.

They brake their time, and my occasions prest me into *London*, being next day to be gone by the Act, and about nine of the clock at night, I was sent for by Captain *Ashley* and *Benson*, who delivered me a letter from *Barnard*, pressing me to subscribe the engagement which *Benson* engrossed, and that being done, he would go with me next day to *Gravesend*, and the Gentlemen of *Kent* should meet there, and there the money to be paid.

* This was done by three and confessed, but omitted here but is by another paper supplyed, &c.

The tide being fit for passage, on Wednesday *Barnard* came not, but *Benson* pretended him to be at *Tottenham* Court with the *Buckinghamshire* Gentlemen, and that he was well hors'd, and would come presently, and should follow; and so Captain *Ashley* and my self, with no more then fifty shillings in my purse, presuming upon the money there, went to *Gravesend*, and expected till Thursday night, but found no *Kentish* men, and no one from *London* coming. Captaine *Ashley* went that night with the eveningtide for *London* to enquire the reason, and on the *Friday* morning early came Major *Barnard*, and Mr. *Smith* with a letter from *Benson*, purporting that if Sir *John Gell* would not co-ingage under his hand and seal, with those whose names were subscribed (of which I only know *Barnard*, *Smith*, *Benson*, and *Ashley*,) they would go over themselves (meaning himself and *Barnard*) to the Prince, and spoile both mine and *Sir. Johns* credit with him, and disappoint all that I intended in his favour, and that he had letters

from Sir *John* which he could produce ſhould make him repent his refuſal, or to ſuch effect, and therefore deſired me to write to Sir *John Gell*, to let him ſee his danger, which I did, laying the caſe before him, and not preſſing him, but leaving him to do as God ſhould direct him, and his judgment lead him: with which letter *Barnard* and *Smith* went away, with aſſurance that whether Sir *John Gell* engage or not, I ſhould hear next day from them, and if he did engage, they would come down and go for *Rocheſter*, where their former undertaking ſhould be performed to me; and if he did not, I ſhould be diſengaged, and have my ſubſcription and ſeal ſent me, and the deſign ſhould fall. I expected till Saturday night, and finding no anſwer, reſolved on *Munday* to intend my privicie in the Countrey upon my firſt purpoſe for new *Albion*, and in the morning early was ſeized by a party of horſe, and brought to *London*.

My Lords,

In that Narrative you will ſee a believing nature wrought upon by treacherous men, ſuch who cannot be true to any, whileſt falſe to parties.

The pretended deſign vaniſht, as never being more then a phantaſm, and not worth your regard, the real deſign effected ſo farr as they had power or opportunity, that is, to bring the game into the toyle, and there leave them to be entangled and made a quarry.

Yow will find me paſſively Active, being prompted and enticed by their inſinuation, and not once but hearkening to them.

Since I ſaw the Act I am of another opinion if Law be not altogether out of faſhion.

It lies in your Lordſhips power to cut me off, by extending which you can arrive no honour amongſt men, and poſſibly by an Act of lenitie you may do an office acceptable to God.

Cujus fiat voluntas modo in ruinâ meâ.

Whoſoever ſhall be preſent at my Tryal, or into whoſe hands this Narrative ſhall fall, will eaſily conclude with me.

Quos vult perdi Deus, hos dementat prius.

Eus. Andrew

On.

On the Tuesday after his remove to the Tower, he was called to be further examined, and at his return writ back to them some particulars (*viz.*) concerning Captain *Holmes* by want of memory not before signified. And in case the State should have suffered ought by the said *Holmes*, it might have made *Mr. Andrews* incapable of lawful favour, by reason of his tenacity concerning the said *Holmes*, who (for ought Mr *Andrewe* knew) was guilty of his being betrayed; And if so, might as well intimate his knowledg of *Holmes* purposes, to the end that *Mr. Andrews* concealment of them might augment his crime, and also concerning *Mr. Thomas Barnard*, who being at large and unquestioned, *Mr. Andrew* had cause to have the like jealousie of. 1 Apr. He was much prest concerning Mr. Bar.

On Friday sevenight following, he was called again, and was confronted with Sir *John Gell*, and avowed what he did indeed neither directly deny, nor was troubled that he did averr; freely telling the President, that howbeit he did not remember some things in point, yet he was confident that he would not do him, nor any man wrong; And then declared to the President that he look'd upon Sir *John Gell*, as upon himself, as a betrayed man, but as concerning others, he knew not by whom he had been free in his confessions though to his own injury. 11 Apr.

He then acquainted their Lordships, that he had something to rectifie in his former examinations and papers, upon better memory in point of material circumstances. They directed him to put them into writing, and to send them, and they called for his hand to the former examinations and papers; which he gave them, and the same day writ to them as followeth.

To the Right Honorable the Lord President and Council of State.

May it please your Lordships,

ACcording to the favourable licence by your Lordships to me given, I have digested into writing those matters of circumstance, wherein my examinations and narrative, are in defect of my memory only incertain and short; humbly praying that they may be recieved and made a part of that relation, which I must abide by at my Tryal; and that the former errors may be rectified and defects supplied so far, as by this supplementary account upon my serious recollections given, may be done. And I shall then be confident, I shall appear not to have willfully concealed (however guilty) or misrendred any thing pertinent, whether the same carry with it my condemnation, or excuse.

What passed between my self and *Mr. Barnard*, before my acquaintance with *Holmes* and *Benson*, and which is expresst in my answers, and narrative, was in time before *Easter Term* last, when there was an order for departure of persons in my condition, from this Town, and I in obedience thereunto, did leave this City on Saturday the sixt of *May*, and came to *Mr. Osborns* house at *Carleton* Hall in *Suffolk*, on Thursday following, from whence I stirred not at any time more then five miles, until the sixt of *August*, when I was sent for to make assurances between a Kinswoman and her husband in point of Joynture, by them to me mutually referred, in which business, and in other matters between another Kinswoman, and a *Merchant* of *London*, being under refference to Arbitrement: as also in endeavouring to get some friend to contract in the behalf of my daughter, for the reversion of a Lease holden of the *Deane* and *Chapter* of *Ely*, in which she is interested for a Life in being, I continued in and near the City, until the third day of *September*, in which time *Barnard* voluntarily brought to my acquaintance *Holmes* and *Benson*, upon the pretences in my Answers and

Arth. Wollaston
Anne his wife
Jane Andrewe
Mr. St. John.

and Narrative set forth, and to which I humbly refer.

The note which mentioneth *Bensons* going with me to *Cambridgshire*, and so to Sir *John Gell*, which in my Answers I have expounded, was drawn from me by *Barnards* importunity, and written at his request, but what use he made of it, (other then to lay it up and reserve it for his present purpose) I know not, nor had any account of it, but went away the third of *September*, there being no conclusion of any thing to be done in substance, or circumstance positive. But Mr. *Barnard* who knew how to direct to me, promised by Letter to intimate further to me, from whom after that, I never received any letter or message to that, or any other purpose, untill my return neer *Michaelmas* Terme, when he told me, that the insuccesfulness of things in *Ireland* had been the impediment.

As to the day, *viz.* The 18*th* day of *October*, being the Fair day at *Ely*, it was only in discourse mentioned to be an opportune time, in case the *Isle* were (as indeed it was not) Garrisond. Neither any solemn or serious design or conclusion, then to-fore or then after made or laid, other then in transient communication, nor any person engaged so much as by word or promise, until this fresh stratagem was set on foot by *Barnard*.

I drew Sir *John Gells* petition before *Christmas*, and had several complements from him by *Holmes*, (at least pretended) before I saw him, and I believe after Twelftide I was invited to him, and entrusted by him in the composing the differences between him and his Lady: In the last Terme I drew his answer, and in the several times of our casual or occasional meeting, the discourses have amounted to what I have before signified, and in your presence and his avowed, and how more exactly to give your Lordships an account in time I cannot.

As to the matter of the engagement I abide by what I have formerly said, with this only, that at my engaging, which was late in the night, before my going out of Town, in obedience to the Act, I was promised by *Benson*, that if Sir *John Gell*, and their pretended friends of the Countrey did not co-engage, I should be disengaged; and in the hour of my going away, *Barnard* being not ready according to promise, but by *Benson* pretended

tended to be at *Totenham* Court with some *Buckinghamshier* men, and that he would undoubtedly follow, I told *Berson* as I remember in the presence of Captain *Ashley*, that whether he came or not, I must for the present remove to *Gravesend* not having convenience of horse to go elswhither so suddenly, and if there were performance on *Barnards* part with me, I should be ready on mine, and if not, I desired to be disengaged, and left to pursue my private occasions into *Surrey*, and I did really carry with me deeds of my Clients, to have employed my self upon, in case of their failour with me.

11th Apr.

Dated by mistake the 13th but writ and sent the same 11th day of April.

I humbly begg your Lordships pardon for a favourable interpretation of this trouble, which is a duty to truth, and right to others, and my self; which could not be omitted by

(*My Lords*)

Your Lordships humble prisoner, and servant.

EUS. ANDREWE.

This together with a petition penn'd by their own direction, for allowance and liberty of friends resorts, being the same day sign'd in the presence of the Lievtenent were seal'd up, and sent by Mr. *John Standon*, who delivered them to the Lord Presidents own hand.

This was his second petition, which with a former to the same effect, (and not of moment to subscribe) did never receive any answer.

At the same time he writ to Sir *Henry Mildmay*, on the behalf of the Gentlemen who were taken with him in these words.

He-

Honor'd Sir.

The paſt nobleneſs I am ſenſible of at your hand, uſed towards me, in the civil treating me when before the State, though a great delinquent, gives me this encouragement, and you this trouble by my preſent addreſs. It is no ſmall encreaſe of my proper misfortune, that I ſee ſuch who were taken with me, as Companions to my perſon, to ſhare ſo deep in the puniſhment, as do thoſe Gentlemen Dr. *Edwards* and Mr. *Clarke*, perſons ſo free from the guilt of my evill, that I am confident they cannot yet give an account for what cauſe I am deſervedly a priſoner, though it were made the price of their liberty. I am an humble ſuitor to you, that you would take them into your favourable conſideration, and to mediate their enlargement. And that you would not let them have a worſe place in your thoughts for that they are recommended to your favour by

Sir, Your moſt humble Servant.

Eus. ANDREWE.

This was read by the Leivtenant and ſent with the other two, &c.

Mr. *Andrewes* at ſeveral times took upon him to averr to the Committee of States, that they had ſpies upon him for ſome years, and particularly *Barnard*, which the Lord Preſident did not deny, but juſtified the State, by the practice of all States to ſet watches upon perſons of ill-affections to them.

This day the Lord *Grey* was with the other three of the State

His third petition ſent about *Eaſter*, being by Sir *Henry Mildmay*, and Mr. *Scot*, put upon it, to ſubmit himſelf, with promiſe of favour if he ſought the State in ſuch manner; which for his relations ſake he did, but with ſome caution in theſe words.

To

To the Right Honorable the Lord President, and Council of State.

The humble Petition of Eus. Andrewe.

Sheweth.

That your petitioner is seriously sensible, and humbly acknowledgeth, that for his high delinquency against the State, he is become forfeited to their Justice.

That he hath not in the least prevaricated with your Lordships, in the confession of his proper faults and follies, nor hath kept ought reserved concerning himself, or any person, or thing, which may satisfie your Lordships, and more secure the State, and is not hopeless to be look'd upon as capable of your present favour and future mercy, which he now doth, and shall alwayes implore.

That his present deserved condition is made more uncomfortable, by his wants, and the exclusion of his friends and relations, without a supply in which, life it self becomes a punishment.

Your petitioner casting himself at the feet of your Lordships, humbly prayes.

That his being prosecuted before the High Court of Justice, may be suspended.

That by your order, his pass and future charge of necessaries may be discharged, whilst he remains your prisoner.

That his friends and kindred may have recourse to him, and that he may have the freedome of his pen.

And in case your petitioner shall be bound in the least to misapply those favours, he shall adjudg himself worthy of a totall deprivation of them, and of your future goodness towards him.

And your petitioner, &c.

This

This was leſs then was look'd for, though as much as he could venture on; in which his deſire for reſpit of his Tryal was inſerted, to prevent only his being the firſt, and exaſperating them by giving others aime in the ſcrupling the Court.

This petition was ſolicited 33 dayes, but no anſwer could be obteined, and his wants growing upon him dayly, he ſent this following Letter to the Lievtenant, who had begun to appeare for him, but had declined it again.

Honor'd Sir.

NEceſſity hath bin long ſince out-law'd, and is in it ſelf apology enough for that crime, of which uncompelled I cannot be guilty, The breach of good manners.

In what condition I was ſent to you the States warrant tels you, with what punctuallity that hath bin obſerved your ſelf well know. To which if you pleaſe to lay the conventing of my Waterman before the Lord Preſident for ſupplying me with my own, and the impriſoning of my Kinſwoman in your Round-houſe all night, and carrying them to the Councill, for but intending me a viſit in my diſtreſs, the interdiction, and orders of the Tower being to them ſtrange; as alſo the placing of a dayes Sentinel againſt my window next the river, whoſe greateſt uſe (for ought I know) was to tell the inquiſitive paſſers by, my name and dangerous quallity; you will eaſily inferr an impoſſibility for me to live of my ſelf, or to be ſuſteined by friends, to whom it is viſibly imputable as crime enough but to be related to me, either in blood, or amity; and what is not ſafe for them to doe, is not honeſt in me to invite.

That I have not been wanting in praying for relief from the State my three petitions, to which you were privy, informe you, having in them ſaid ſo much, that more I cannot ſay, and to repeat the ſame, would but argue that I thought my ſelf hitherto not underſtood, which may not without a new fault be made a queſtion; how dilligently thoſe have bin ſolicited, you

A case concerning his condition besides my 3 petitions which was by the Lievt. presented to the President.

have bin often a witness, and by my case * presented to you may find that I may not in modesty longer press a person to me unrelated, and by me no wayes obliged to make his time and purse mine, by pursuing and undertaking, upon so little encouragement as ten weeks past fruitless attendance, and the expence of more then four pounds, which as all reward for his travaile are become as desperate in his thoughts, as I am in the opinion of all observers.

What by Mr. *John Standon* began, was by him and me intended in your ease, though (if I understand your words) misconstrued as a neglect of you to whom it belongs, (pardon that I must say it) as a duty to your place, not the persons, to acquaint the State with the wants of your prisoners, being not only obliged to keep a prisoner safe from avoyding the Law, but in a condition of life to be produceable to the law when called, which is at present understood and practised in less honorable prisons, and was in this, in the Government of your Ancestors.

Though I would not willingly beget you trouble, and do set a better price upon you, then to make you my solicitor; Yet when life and breach of complement are put into the ballance, my hand may justifie a little enclining of the Beam.

Having thus premised to you, I must and do call upon you to be instant with the honorable Council of State, that by their order upon my last petition I may receive releif in what is thereby desired, in such measure as they shall think me capable.

Sir, If you shall please to give your self, your honour, & conscience an account in this serious matter, I shall not doubt to receive, by your pressure and the States condescention, a seasonable help, and you shall not think it a concernment worthy of your place and person to take notice of; I must beg you pardon if I acquaint my wants to the people by hanging out a box for releif, which will be less dishonour for me to do, then for you to necessitate me unto.

In

In this letter be pleas'd to distinguish my capacities, a Gentleman, and a prisoner, in this I am not unreasonable your trouble, in the other I am and shall be

Your humble Servant.

EUS. ANDREWE.

This letter engaged Mr. Leivtenant, and he stirred again till he was weary, and then took to his assistance, an noble Lady who had obteined an order to speak with Mr. *Andrewes* but in the Lievtenants presence. And because the former coals were dead, he put in the Lievtenants hands this following petition, which with a Letter was sent in a letter of the Leivtenants to Serjeant *Dandy*, by the hands of Mrs. *Elizabeth Colchester*, and was both by her, and the Leivtenant several times attended but not answered.

The Petition, with stile as formerly &c.

Sheweth,

That your Petitioner hath been 12 weekes close prisoner, his friends neither permitted to visit, nor daring to releive him, his score for necessaries swolne beyond his abillity to discharge, his credit protested, and nothing more visible to him then his immediate perishing.

That he hath not been wanting to pray your favours, having three petitions lodging with your Lordships, constantly solicited, but unanswered.

That he hath in his confessions spared nothing which can more conduce to the States security, or his own condemnation.

Your Petitioner therefore humbly prayes

That if at all he muſt, he may ſpeedely receive his tryal, he being ready to ſubmit to the will of God in the iſſue

That if mercy be reſerved for him, which he hath, and doth implore, your Lordſhips would pleaſe to admit him to ſue out his pardon, and to a free converſation in this Commonwealth, upon ſecurity given for his future good demeanour.

That in the mean time he may have the liberty of the Church and Tower, and the freedome of his friends reſorts, and that order may be given for the debt incurred there in the time of his cloſe reſtraint to be diſcharged.

And your Petitioner &c.

Mrs. *Colcheſter* a perſon of quallity having many ſuits, in which Mr. *Andrewes* had bin formerly conſtantly and only her Councel, as to all the adviſing and penning part of her buſineſs, after a months ſolicitation, and with the aſſiſtance of ſome powerfull friends obteined the following order. Which was ſtrictly obſerved.

Whereas we are enformed by the Petition of Mrs. *Elizabeth Colcheſter* that ſhe hath ſeveral ſuits at Law, wherein ſhe hath formerly imploy'd *Euſebius And ewe* Eſquire, now priſoner with you, by warrant of this Council, and that no other perſon can enable her to inſtruct other Council, and hath thereupon petitioned us that ſhe may have acceſs unto him. Theſe are to will and Authorize you to permit and ſuffer the ſaid Mrs. *Colcheſter* to ſpeak with the ſaid Mr. *Andrewes*, provided it be in your preſence, and within you hearing, and that it be not about any matter concerning the affaires of the Common wealth, but about her own particular affaires only. For which this ſhall be your warrant.

Given at the Council of State this Thirtieth of May 1650.

Signed in the name and by order of the Council State appointed by Authority of Parliament.

Jo. Bradſhaw *Preſident.*

To the Lieutenant of the Tower of London or his Deputy.

When

When this order was granted Mr. *Andrewes* three Petitions, were with the State, and moved by many friends, might have been taken into consideration, but were not; and had not his life been preserved by this Gentlewoman, who under colour of the said order did often releive him, he must of necessity have perished, having been fourteen weeks close prisoner.

The Warrant of Commitment which I could not get a Coppy of till the 14th of July, *is as followeth.*

THese are to will and require you herewith, to receive into your custody the body of *Eusebius Andrewe* Esquire, and him you are safely to keep in close imprisonment in the Tower of *London*, in order to his further examination, he being committed unto you for high Treason, in plotting and endeavouring the subversion and alteration of the present Government; of this you are not to faile, and for so doing this shall be your warrant.

Given at the Council of State sitting at White-Hall *this* 30th. *day of* May 1650.

Signed in the name, and by the order of of the Council of State appointed by Authority of Parliament.

JOHN BRADSHAW President.

To the Lievtenant of the Tower of London.

Cook 2d pa[illegible] Instit. fo. 5[illegible] 590.591. allowed for b[illegible] the Parliame[illegible] fol. ult.

This warrant is vitious in it self, in two reasons which make a right warrant of Commitment.

1. That it is not done by due process of Law.

2. that

2. That it hath not a concluſion, *viz.* and ſafely to keep until he be delivered by courſe of law.

But leaves it indefinite and is rather a condemnation to perpetual, at leaſt to arbitrary impriſonment, which is worſe.

The cloſe impriſonment is but in order to his further examination, and he had been twice ſince examined, and ſigned his examinations before *Eaſter*, and did not refuſe to anſwer any queſtion demanded of him.

The warrant is dated from the Council of State ſitting at *Whitehall* the 30*th* of *May*, whereas he was brought to the Tower the 30*th*. of *March*, being Sunday, by ſeven in the morning, at the opening of the Gate, (no Council ſitting) and the warrant ſign'd on Saturday the 29*th* of *March*.

Having attended a Month in expectation of an anſwer to his laſt petition, without anſwer he addreſſed the following letter to the Speaker, and the Petition incloſed to the Parliament, of which theſe following are the true Copies.

Right Honorable,

NOthing but an Iron neceſſity could have induc'd me to the fault of begetting you this preſent trouble, and to intrude upon that little vacancy you have from the publick, to intend your perſonal affaires, of that neceſſity the encloſed is the epitome: the treachery of my betrayers, and mine, and my innocent friends ſufferings, by the inflexbility of thoſe under whoſe immediate power I am hereby fallen, are extendible into no ſmall volume. I am therefore compelled *Fontem petere*, and wanting the opportunity of a familiar, to make uſe of this extraodinary way of addreſs, which I hope will meet ſuch goodreſs in you as will not need a larger apology. Pardon I pray that I preſs your Honour, in ſence of honour and piety, to preſent the incloſed as the humble repreſenter of my ſad condition, and, in my intendment, humble deſires. And when it ſhall come to be by that grave Aſſembly taken into conſideration; that your ſelf, and thoſe honorable perſons would reflect,

fleet upon me, however clouded under my present (though nothing justifiable) crimination, as upon a Christian, and a Gentleman, and of that, in it self, honorable long Robe, though sullied by my wearing. I will not multiply your disturbance by an impertinently long Epistle, knowing I am easiely understood, and hoping to find a propensity in your honor to afford what favour may be lawfully extended to

Honor'd Sir

Your Honors most humble servant.

Tower, 20 *July* 1650. Eus. Andrewe

The Petition to the Parliament followes

To the High and Honorable the Parliament of England.

The humble Petition of Eusebius Andrewe *Esquire close prisoner in the Tower of* London.

Sheweth

That your petitioner hath been by a confederate pack of setters, wrought into actions which (abstracted from their circumstances) render him liable to your justice, and this done, not without their further hope, that your petitioner, as they supposed, had interest to have drawn divers persons of quality and fortune into the same entanglement.

That failing of that part of their aime, the said confederates did betray your petitioner to the honorable Council of State, by whose warrant he hath bin 16 weeks a strictly close prisoner, without

without a fortune of his own, the acceſs of friends, or means of ſubſtance allowed; and is like to periſh by his wants, before it be diſtinguiſht by a publick Tryal, whether he be a fitter object for the applying of your juſtice, or your mercy.

That he is hereby diſabled to be accountable to the ſervice of God, the duty to his family and friends, and to thoſe who give him credit for bread. And in caſe he ſhould be call'd from ſuch his cloſe reſtraint to his tryal, muſt be deſtitute and deprived of all fair means of making his reaſonable defence, which however it may ſute with pollicy, will not be conſiſtent with Religion and Honour.

Your petitioner having, for releif in the premiſes, by all opportune addreſſes, and by four petitions importunely ſolicited and ſought the ſaid Council of State without anſwer. In the deep ſence of his preſſing ſufferings humbly appealeth to this high Court, caſting himſelf wholly thereupon, and as humbly prayeth.

1. That you would prevent your Juſtice by your mercy, and admit him to ſue out his pardon upon ſecurity given for his future good demeanor to the State in this Commonwealth.

2. That if that be too great a favour you would grant him licence to depart the Common wealth he engaging not to act or contrive ought to the diſſervice of the State.

3. That if he be not thought capable of either, but that he muſt receive a publick tryal he may have a convenient time of preparation after a quallifying of his impriſonment.

4. That in the mean time he may have the liberty of the Tower, and reſort of his friends, and that by your order his debt for livelyhood incurred in his cloſe reſtraint may be diſcharged.

In all which your petitioner is ready to ſubmit to the will of God, whoſe providence hath put Juſtice and mercy into your preſent diſpenſing.

And ſhall ever pray

The

The humble Anſwer of Euſebius Andrewe *Eſquire, in his defence to the proceeding againſt him before the Honorable the High Court of Juſtice preſented* 16th. *day of* Aug. 1650. Anſwer. 1.

THe ſaid reſpondent (with the favour of this honorable Court) reſerving and praying to be allowed the benefit and liberty of making further Anſwer, offereth to this honorable Court.

Firſt, That by the Statute or Charter ſtiled *Magna Charta*, which is the fundamental Law, and ought to be the ſtandard of the Laws of *England*, confirmed above thirty times and yet unrepealed, it is in the *29th.* Chapter thereof *Granted* and *Enacted*,

1. That no freeman ſhall be taken, or impriſoned, or be diſſeiſed of his free hold or liberties, or free cuſtome, or be out-lawed, or exiled, or be any otherwiſe deſtroyed, nor we ſhall not paſs upon him, nor condemn him, but by a lawful Judgment of his Peeres, and by the Laws of the Land.

2. We ſhall ſell to no man, nor deferr to any man Juſtice or right.

Secondly. That by the Statute of 42 of *Edward 3d.* Cha. 1.

1. The Great Charter is commanded to be kept in all the points. And

2. It is enacted that if any Statute be made to the Contrary, that ſhall be holden for none, which Statute is unrepealed.

The Reſpondent obſerveth that by an Act of the 26 of *March* 1650. Entitled an *Act for eſtabliſhing an High Court of Juſtice*, Power is given to this Court to Try, Condemn, and cauſe Execution of Death, to be done upon the Freemen of *England*, according as the Major number of any 12 of the Members thereof, ſhall judg to appertain to juſtice.

And thereupon the Reſpondent doth humbly inferr and offereth for law,

That the ſaid Act is diametrically contrary unto, and utterly inconſiſtent with the ſaid Great Charter, and is there-

fore by the ſaid recited Statute to be holden for none.

That it can with no more reaſon, equity, or juſtice, hold the value and reputation of a Law (the ſaid Statute before recited being in force) then if, contrary to the ſecond clauſe in that 29th Chap. of *Magna Charta*, it had been alſo enacted, that Juſtice and Right ſhall be deferred to all freemen, and ſold to all that will buy it.

Thirdly, That upon premiſing, by the Petition of Right 3d *Car.* that contrary to the great Charter Tryals, and Executions, had been had and done againſt the Subjects by commiſſions Martial, &c. It was therefore prayed, and by the Commiſſion enacted, That

1. No Commiſſions of the like nature, might be thenceforth iſſued, &c. and that done

2. To prevent, leaſt any of the Subjects ſhould be put to death contrary to the Laws and Franchiſe of the Land.

The Reſpondent humbly obſerveth and affirmeth, That

This Court is (though under a different ſtile) in Nature, and in the proceedings thereby directly the ſame with a Commiſſion Martial; the Freeman thereby being to be tryed for life, and adjudged by the major number of the Commiſſioners ſitting (as in Courts of Commiſſioners Martial was practiſed, and was agreeable to their conſtitution) and conſequently againſt the Petition of Right, in whichhe, and all the freemen of *England* (if it be granted there be any ſuch) hath and have right, and intereſt, and he humbly claims his right accordingly.

Fourthly, That by he Remonſtrance 15 of *December*, and the Declaration 17 *January* 1641. The benefit of the Laws and ordinary Courts of Juſtice, are the ſubjects Birth-rights.

By the Declarations of the 12th *July* and 16th *October* 1642. the preſervation of the laws, and the due adminiſtration of juſtice, are owned to be the juſtifying cauſe of the warr; and the ends of the Parliaments affaires, managed by their ſwords and Councils; And Gods curſe is by them imprecated, in caſe they ſhould ever decline thoſe ends.

By the Declaration of 17 *Apr.* 1646. promiſe was made not to interrupt the courſe of Juſtice in the ordinary Courts thereof.

By

By the Ordinance or Votes of non-addreſſes, *Jan.* 1648. it is aſſured on the Parliaments behalf, That

Though they lay the King aſide, yet they will govern by the laws, and not interrupt the courſe of Juſtice in the ordinary Courts thereof.

And thereupon the Reſpondent humbly inferreth and affirmeth, That

The conſtitution of this Court is a Breath of that publick faith of the Parliments, exhibited, and pledged in the Declarations, and votes to the Freemen of *England*.

And upon the whole matter the Reſpondent (ſaving as aforeſaid) doth humbly affirme for law, and claime as his right.

That this Court, in defect of the validity of the Act, by which it is conſtituted, hath not power againſt him, or to preſs him to a farther Anſwer.

That by vertue of *Magna Charta*, the Petition of Right, and the before recited Remonſtance and Declarations, he ought not to be proceeded againſt by this Court, but by an ordinary Court of Juſtice, and to be tryed by his Peeres.

And prayes, That this his preſent Anſwer and Salvo may be accepted, and regiſtred, and that he may be tryed by his Peeres accordingly.

EUS. ANDREWE.

The farther and ſecond Anſwer of Euſ. Andrewe *Eſq. to the Honorable the High Court of Juſtice, preſented the* 16th *day of* Aug. 1650.

Anſwer. 2.

THe ſaid Reſpondent (with the favour of this Honorable Court) reſerving and praying to be allowed the benefit and liberty of making further Anſwer (if it ſhall be adjudged neceſſary) in all humbleneſs for preſent anſwer, offereth to this honorable Court;

That by the letter and genuine ſenſe of the Act, entituled, *An Act for eſtabliſhing an High Court of Juſtice*, the ſaid Court is not quallified to try a free man of *England* (and

such the Respondent averreth to be) for life in case of Treason.

First, For that 1. The said Court is not constituted a Court of Record, and (but upon Record) cannot at all have that accompt of their freeman, which Kings were wont to have of their Ministers of Justice.

2. The Free man and such who are and may be concerned in him, can have no Record to resort unto, by which to preserve the rights due to him and them respectively. *viz.* of

1. A Writ of Error, in case of erroneous judgment, due by the Presidents. } *Pasch* 39 *Ed.* 3. *fol.* of *Gaunts* case. 4. *Ed.* 3. *Rot. Parl.* Num. 13. *Count de Arundels case.* 42. *Ed.* 3. *Rot. Par. Nu.* 23. Sr. *Jo.* of *Lees case.*

2. A plea of anterfoyes acquit, in Case of new question for the same fact; the right to which, and the necessity of such Record, appears by } *Wetherel* and *Darlyes* Case 4. *Rep.* 35. *Eliz.* *Vaux* his case *ibidem* 33 *Eliz.*

3. A being enlarged upon acquital, as is the freemans due, by the Stat. 14. *Hen.* 6. and the Case thereupon grounded. } *Dyer fol.* 120 and *abridg: fo.* 33.

4. A Writ of Conspiracy against those who have practised the betraying the life of the Respondent not to be brought before acquital, & no acquital, but upon Record, as appeareth by } The *Poultiers* Case, 9 *Rep. fol.* 55.

This Court is to determine at a day, without accompt of their proceedings; have power to try, judg and cause execution, but not to acquit or to give enlargment; so that the nocent are thereby punishable, the innocent not preservable; the injured and betrayed, not vindicable; which are defects incompatible with a Court of Justice, and inconsistent with Justice it self and

and with the Honours of a Christian nation and Commonwealth.

Secondly, for that the members of this Court are by the Act directed to be sworne.

1. Not in *conspectu populi* for the freemans satisfaction.
2. Not in words of indifferency, and obliging to equallity.
3. In words of manifest Partiallity. *viz.*

You shall swear that you shall well and truely, according to the best of your skill and knowledg, execute the several powers given unto you by this Act.

The Respondent humbly offers, That

1. The Court in their capacity of Tryers ought (in reason) to have been appointed by their constitution, to have been sworn as Tryers in full Court, according to the practise in all equall wayes of Tryall.

2. The Court as Commissioners of Oyre, and Terminer, (being authorized by the Act to hear and determine) should in like reason be appointed an oath, such as is usual for persons so qualified, as provided 18. *Edw.* 3. *viz.*

You shall swear that well and lawfully you shall serve our Lord the King, and his people (mutatis mutandis) *in the office of Justice, &c. and that you deny to no man common right, &c.*

Or some Oath equivalent at least to that of a Justice of Peace, *Dalton fol.* 13.

I A. B. *do swear that I will do equall right; and according to my best wit, cunning, and power, after the laws and customes of the land and the Statutes thereof made &c.*

3. The Court in the capacity of tryers should (in reason) be obliged by an oath, of as equitable sence as that usually administred to Jurors; *viz.*

You

You shall well and truly try, and true deliverance make between our Soveraigne Lord the King, (mutatis mutandis) *and the prisoner at the Barr; so help you God.*

Whereas when this Court shall (as it is now constituted) have condemned the freeman, the Respondent, or other, by applying their skill and knowledg, to their power; whether justly or not, the oath by them taken is not in the letter broken; as to be exactible by man, though God will provably have a better accompt.

And therefore upon the whole matter premised, the Respondent (saving as before) offers for law and reason, that the honorable Court, the high Court of Justice, is not, by the letter and proper sence of the words of the Act, by which it is constituted, qualified in respect of the preobjected defects to pass upon him for his life, upon a charge or crimination of high Treason.

And humbly prayes that this his second Answer, and Salvo, *may be received, and registred, and that he may be tryed, as in his former answer he prayed*

EUS. ANDREW.

Answer. 3.

The farther and third Answer of Eusebius Andrewe *Esquire, to the Honorable the High Court of Justice, presented the 16 day of* Aug. 1650.

THe said Respondent (with the favour of this honorable Court) reserving and praying to be allowed the benefit and liberty of making further answer, (if it shall be adjudged necessary) in all humbleness for present Answer, offereth to this honorable Court.

That First. It is his right (if he must admit this Court to be duly and legally established and constituted, as to their being a Court) to be tryed by his Peeres, men of his own condition, and neighborhood.

Secondly,

2. It is within the power of the Court by the letter, and ſence of the Act, or at leaſt as being not repugnant to the Act, to try him by ſuch his Peeres, &c.

Firſt, That it is his right to be ſo, and only ſo tryed, appears by *Magna Charta Ca.* 29. 25 *Edw.* 1. *Ca.* 1. and 2. 5, *Edw.* 3. *Ca.* 9. 25. *Edw.* 3. *Ca.* 2. and 4. 28. *Edw.* 3. *Ca.* 4. 37. *Edw.* 3. *Ca.* 18. 42. *Edw.* 3. *Ca.* 3.

By all which Statutes made in full Parliament, conſiſting of the head, and all the members actually, as well as virtually, this the Reſpondents right is maintainable, and demandable, and the contrary proceedings thereunto are To be held for none, and redreſſed, &c.

To be held for voyd, and error, &c.

So that, If the laws and Courts were not obſtructed, (in the caſes of ſome ſort of freemen of *England*,) the whole proceeding contrary to theſe laws, without a Jury of his Peeres, were avoydable, and reſervable by writ of error, as appeares alſo by the Preſidents vouched by the Reſpondent in his ſecond Anſwer.

Secondly. That it is in the Courts power to try the freeman, and conſequently the Reſpondent, by a Jury of his equals, the Court is humbly deſired to conſider the words of Qualification.

The Court is,

Firſt, Required to hear and determine; and ſo, if at all Commiſſioners, then Commiſſioners of Oyre and Terminer, and ſuch Commiſſioners in their natural conſtitution and practical execution, do proceed againſt the freeman according to law, by a Jury of his equals and not otherwiſe.

Secondly. Authoriſed to proceed to tryal, condemnation, and execution, &c. But not reſtrained to the manner of Tryal, *Limitativè*, as to tryal by the Courts opinion as tryers, *Non excluſivè*, as to tryal *per Pares*; But is left in the manner, as in the Judgment it ſelf, to the opinion of the major number of 12, and if they ſhall think fit to try by a Jury, it will be no offence againſt the Act, there being no clauſe or prohibition to the contrary.

And

And therefore the Respondent humbly claimeth his said Right, as consisting with the said Power.

And the more to enduce the Court to grant him such his right, and the benefit thereof, the Respondent humbly repre-senteth the manifest wrong, and multiplyed disherison, done to him; and in him to the *Freemanry of England*, in the following particulars of their like just right, (depending upon such tryal to be allowed) if denyed him, by this Honorable Court.

First. The benefit of

Challenge to the tryers, 35 peremptorily, and for treason *Sans* number. { *Stampf. pl. Cor fol.* 150. *Tit. Challenge Poynings case* 32. *Henry* 6. *Fitz. fo.* 26. *Allowed Hill.* 1. *Jacobi* to *Sir Wal. Rawleigh and Brooks.*

Secondly. The liberty of

Seeing, hearing, and counter-questioning the witnesses, for clearing the evidence in matter of circumstance, as well as in matter of fact; which appears to be the Respondents right, by

The Stat of. { *Stamf. pl. Cor. fol.* 163, 164 } { 1. *and* 2. *Phil. and Mary*, *Cap.* 10. *and* 11. 1. *Edw.* 6. *Chap.* 12.

The Authority of (the laws Oracle) *Cook* 2. part *Inst. fol.* 12. commenting upon the words in 25. *Edw.* 3. *Ca.* 2. *Provablement Attanit*, because the punishment was heavy, the proof to be Punctual, and not upon presumptions, or inferences, or straines of Wit, but upon good and sufficient proofs; also by the Stat. of 1. *Eliz. Ca.* 6. 13. *Eliz. Ca.* 1.

Thirdly. The being

Convinced, or acquitted by a full, free, and fully consented virdict. For

First.

First. A verdict by a Jury passeth from all, or not at all. In the proceeding by voyces, a sentence passeth by way of *Concurrence*, with which the *Star-chamber*, *High Commission*, and *Courts Martial* were branded, and condemned of *Inequality*.

Secondly. A verdict passeth upon a Jury before discharged, upon their affaires of Estate, or supplies of Nature, to prevent corruption of money and power, but as this Court proceeds (if it will proceed by voyces,) a tryal may be had this day, and a sentence may be given at leasure; when the Will of those, by whom the Freeman is prosecuted, be first known.

And upon the whole matter

The Respondent humbly claimes the benefit, and right, of being tryed (if before this honorable Court) *per Pares*, men of his own condition, and of his neighborhood, and that he may hear and see all the witnesses produced against him; *viva voce et aperta vultu*; And may have power, liberty, and time to produce witnesses in his defence.

And (saving as formerly) humbly prayes that this his Answer, and Salvo, may be received, and Registred.

Eliz. Andrewe.

His engagement originally for the King was lawfull by the Stat. of 11. *Hen.* 7. *Cap.* 1.

By his Commissions producable.

The King not virtually in the Parliament; but both virtually with us his Souldiers, and unlawfull for the Parliament to compell him, &c.

Hugh Spencer and his Son. Calums Case

That homage and allegiance were due to the King only in respect of his Crown (which is a virtual allegiance and by which, or upon the same reason the Parliament inferrs their necessity or interest of Acting. Rep. Coo. 7.

That the Leiger may remove the King.

That he might be reformed *per asperte* by force.

That they might and were bound to govern in aide of him, all damn'd by the Act of *Exilium Hugonis le Ospence in Edw.* 4. *and in* 25. *Edw.* 3. 2.

The natural, & politick bodies are indivisible & incorporate, 4 *Eliz.* resolv'd as law, *Plowd. Com. fol.* 212, by Sir *Roo Cathline a Just.* Sir *Jam. Dyer a Just. Co. pl. Sandes a Bar. Russel, Brown, Corbet, Weston, Frenyt, Just. Carewe* & *Pewteret* Serjeants, *Gerrard* Att. *Gen. Caret* Att. *Dutchy, Plowden* himself.

If the virtual power be in the King his assent needless, from 9. *Hen.* 3. to 1. *Hen.* 7. the stiles were.

The Kings ordinances at his Parliament, &c. or by advise of his Prolator, and Barons, and at the petition of the Commons.

1. Inst. Coo. fo. 234.

Since 7. *Hen.* 7. *Ca.* 14. by the King, Lords spiritual and temporal, and Commons assembled, &c.

3. Eliz. Dyer 203.

The Queen summoned a Parliament 23 *Jan.* 1. of her reign, and in regard of indisposition of health prorogued till 25 *ejusd.* Resolv'd, that the Parliament then and not till then began.

Where was the virtual presence when the King was in *Newcastle, Holmby, Hampton Court, Carisbrook, Windsor*, St. *James's* prisoner.

Declaration in *Apr.* to the Scots papers 22. *Nov. pag.* 8. that the King was not in condition to govern.

The Oath of a Parliament man, till which taken he is not effectually such.

That the King is Supreme Governor, &c.

His being with the Prince.

My being with the Prince in *Holland*, I was there before him, and in good manners having been his Souldier, Secretary to the Lord *Capel*, visited the Court, and took a friend from, and pulling him off, and this in his fathers life time, he being by him commissioned.

Refus'd

Refus'd command for *Ireland*, having expectation upon the treaty then on foot; when it seems warr was so precious, that the Petitioners for peace were Voted Malignants, and disabled, &c.

My message to Lord *Hopton* and Letter, was to certifie to the King my Interest in the Office of the Clerk of the Crown in *Ireland*; and to pray him, that if he surrendred there, he would not give away my right in my absence; which was a duty I ow'd to my Family and Person, and which every man in my condition would do.

The answer was only pertinent to such requeſt, and as then not prohibited to be done, either to send or receive from any.

Mutual Interest the Commons are not to take notice of, being private and obscure, and only currant amongst their relators the Souldiery.

Testimony of *Barnard* not allowable; for unless he can fix upon me, he loseth his reward; and all done only in confidence of him, who held intelligence with the Lord President *Bradshaw*: so that no danger at any time to the State, but an expectation in them to get by the bargain, by my drawing in others, and then all to be shapt.

Smyth a counterfeit name, and *Pitt* his name, party with *Barnard*.

My name *Dudley* only as to *Barnard* in this kind of casual; to others only to prevent arrests of other mens debts, least by a suspition on my place of abode, my name should be discovered to my Creditors.

My name and person known and perfect where ever I lay, at *Feres*, at *Sartaints*, at *Coopers*, at *Perkins*, at *Manes* ordinary, and known to all the streets and people. Gravesend. Carleton-Hall.

Detaining them close prisoners, without the liberty of using Book, Pen, Ink or Paper; denying them all the comforts of life, all means of preservation of health, &c. denying them the means of spiritual consolation, not suffering them to go abroad to enjoy Gods Ordinances in Gods House, or Gods Ministers to come to them, to administer comfort to them in their private Chamber. Decemb. 15. 1641. Remon. fol. 5.

And fol. 8. Compare 9. Act for Removal. Act for Engagement.

And the ordinary course of Justice, the common birthright of the Subject of *England* obstructed unto them.

The restraint of the liberties of the Subjects in their Habitations, Trades and other interests.

Fol. 9. Starchamber deprive men of the society of their friends, exercise of their professions, comfort of books, pen, &c.

fol. 10. Judges awed that they durst not do their duties.

fol. 10. New Oathes been forced upon the Subject against Law,

fol. 10. New Judicatories erected without Law.

fol. 10. The pretended Court of Earl *Marshall*, was arbitrary and illegal in its being and proceedings.

The Bishops 23. They imposed a new Oath upon divers of his Majesties Subjects, both Ecclesiastical and lay, for maintenance of their own Tyranny.

And then Magnifying their own doings in this Parliament, they say, That

fol. 17. These things will appear only in future times in story, to give us and our posterity more occasion to praise God for his Majesties goodness, and the faithfull endeavours of the Parliament.

fol. 16. The Laws of the triennial Parliament, and the non dissolving of this without consent of both Houses, may be thought more advantageous then the former.

fol. 22. What can we the Commissioners do without the conjunction of the House of Lords.

Acusatores.

Cic. in ver. *Curere debet omni vitio qui paratus est in alterum divere.*

Nulla salus Reipublicæ major est quam eos qui alterum accusant, non minus de laude, de honore, & de famâ sua, quam illos qui accusatur de capite ac fortunis suis pertimescere; Iosq; semper hi diligentissime laboriosissimeq; accusarunt qui se ipsos in discrimen existimationis venire arbitrati sunt.

Extem-

Exempla.

Domitianus dum Rapinis intendit ananeum ita Aures delatoribus patifecit ut nihil cuiquam Tutum esset. Allex: ab Allexandro Lib. 4. Cap. 22.

Multa esset oportet in eo qui alterum accusat primum integritatem atq; innocentiam. Nihil est enim quod minus ferendum est quam rationem ab altero vite reposcere eum qui non possit suo reddere. Cicero in Ver.

Tuta frequensq; via est per amici fallere nomen,
Tuta frequensq; licet sit via Crimen habet.

Fraus fidem in parvis sibi praeservit ut cum opere precium sit magna mercede fallat.
Barnaldus vidit omnia, & perdidet omnes.

To Plot.

Must argue the Propounder and Consenter to be both of one mind; If not, but that one intends not the thing purposed, but to betray the other by his consent thereto, cannot be a Plot in any interpretation.

The same for Contrive or Endeavour, as to the second Clause in the Act for Establishment. 2 Clau.

Est innocua adversitas ubi iniquitas Null A.
Est vita infelicissima in qua adversitas Null A.
Sat Miser est qui semel est Miser.
Periissem si non periissem.
Fiat voluntas Dei modo in ruinâ meâ.

Eusebius Andrewe.

The

The Several Arguments of Collonel *Andrewe* at his Tryal.

The First Argument.

My Lords and you Gentlemen Members of this Honorable Court.

I Have (as becomes me) been attentive to the charge which hath been read against me. It appears in that dress it is put already, (though I presume it shall be clad in other apparel by Mr. Attorney) so specious, and so great, as that my friends (if I have any here) begin to fear, the indifferent to doubt, and the partial to desire, and joyne in my condemnation, my self (I hope I am not partial to my self) believe, that it will be no more then the mountaines labour, and when it shall come to be dissected, will prove to be *inane aliquid*, like the Apples of *Sodom*, that however they take the first fence the eye, as this the eare, do rather foul the fingers that touch them, then satisfie the appetite in its expectation upon them.

Parturient montes &c.

My Lord,

I am at an unusual Barr, and engaged in a great cause of a far extendible concernment, my fee is life, and my duty is self-preservation, which in it self were less considerable, if by a president of my suffring, the consequence would not prove mischievously Epidemical.

I do not willfully refuse to plead to the charge, but humbly crave leave to offer my reasons for the suspending of my *Plea*. And if I be importunate (yet within the bounds of civility) I beg your pardon, and that I may have a full, a free, and an uninterrupted hearing.

My Lord,

When the Jews prest *Pilate* to sentence *Christ*, they obtruded

ded to him that they had a Law, and by that law he ought to dye. What they thought reasonable to claim, when it served their turn to vent their Malice, will be I hope warrantable for me to lay hold on in a better sence, for the vindication of Christ, who suffers when Justice is a sufferer. We have a law too, and by that law, I ought not to plead, not to be tryed, not to be judged. Jer. 26. 6. Jehova justitia nostra.

The Laws of *England* were not unknown, but mispractised; when the *Barons* fought King *John* into a consent to the (not new making but) restorement of the ancient Laws.

And *Magna Charta* it self, is but a confirmation or restitution of the common Law, and is become the Standard by which Laws are reduceable, and is the foundation of all other Acts of Parliament. Cook 1 part instit. fol. 81, 82.

It hath been at no time dismembred; no part abrogated by any repeal.

It hath been confirmed above 30 times, and commanded as often to be observed and put in Execution.

In the Act call'd *Confirmatio Cartarum*, it is directed to be allowed as the Common Law in judgment, in all points, by all the Judges and dispensers of Law, or which have the law to guide. 25 Edw. 1. ca. 1. Bracton 414. 491. Fleta lib. 2. c. 48. lib. 3. c. 3

It hath in former ages gained an honourable esteem in the old books: *Charta libertatum Communis libertas Anglia*, *Charta de Libertatibus*, &c. these are the Appellations. Mirror c. 2. 18. Britton fo. 177.

It was a *Noli me tangere*, and for seeking a Reversal or Avoidance of it, *Hubert de Burgo* was sentenced by the *Barons*, and the sentence confirmed by King *Henry* the Third. 17 Henry 3. Rot. Cla. mem. 1. 2 Rot. Prutriuf. M. 1.

The great *Hugh Spencer* in the raign of *Edward* the second, was banisht but for rashly counselling against the *Encounter la forme de la granda Charter*. 14 Edw. 2.

And to draw downwards yet one Kings Reign, and to the point to which I would apply; I find in the 42 year, this great Charter was not only barely confirmed and commanded to be kept in all the points, for those are the words; But to prevent any alteration of it, is enacted, That if any Statute be made to the contrary, that shall be holden for none. 42 Edw. 3. c. 1.

By this *Magna Charta* it is granted, and Enacted too; if my. Cook. 1 Justit. fol. 81.

my Lord (ask) say true, who saith it is a Statute, as well as a Charter, being made by Assent and Authority of Parliament. That

25 Ed. 3. Ch. 4. 19 No Freeman shall be taken or Imprisoned or be disseised of his Free-hold, or Liberties, or Free-customes, or be outlaw'd or exiled, or any otherwise destroyed; nor shall not pass upon him nor condemn him, but by lawfull judgment of his Peers, and by the Law of the Land.

We shall sell to no man, nor defer to man either Justice or Right.

If this be Truth and Law, which I have in these particulars promised to you, then (my Lord) give me leave to take notice.

That by that Act by which you are constituted a Court of Justice, you are authorized to try the Freemen of *England*; not *per Pares*, upon or for offences against Articles, and the punishment to reach to life, as the Major part of any 12 of the Commissioners shall judg to appertain to justice.

Laying these together, a Posting Rider may Read, that these Lawes are diametrically opposite, and consequently inconsistent.

The latter hath its doom inherent by its innate contrariety to the former, and is a building a superstructure so unsuitable to the foundation, that if it had not a double edged support, it needs no help to be demolisht, but would fall. I know not whether to say *sua mole*, or *sua pensilitate*.

The Constitutors of this Law are *Gladiis cincti*; and therefore as I am not in opportune place to speak to them, so there is somthing of danger to speak too freely to them; but (my Lord) your Lordship as you are in this place, are (I am sure ought to be) like the Escochions of Princes, with their addopted Supporters, Knowledg and Conscience, and if you are, I am confident you will doubt of your Commission, or warrant to proceed against me, and compel me to preserve an inch of life, by giving away mine and my Countrymens Liberty, in condescending to a Plea and Tryal, in this contra-legal way, and by power of this Act.

The

The second Argument.

My Lord,

I Shall further beg leave to call to your memory the Petition of Right; which was made the buſineſs of the Parliament, at the time when it was preferred, and received the Royal aſſent, muſt never be forgotten by thoſe who hold in eſteem the care of Parliaments, and gracious conceſſions of Kings. Petition of Right. 3 Car.

In the Proeme or leading part of that Petition, the Statute of *Magna Charta* is inſtanced as to this particular, tryal for life by proper Courts, with other the Laws and Statutes (ſome of which I have cited, and the reſt ſhall upon another point in their place;) and as it is complained, that proceedings had been by Commiſſioners Martial; when and where, if by the Laws and Statutes of the land they had deſerved death, by the ſame Laws and Statutes alſo they might, and by no other laws ought to have been judged; ſo is it prayed, and accordingly enacted, That no Commiſſions of like nature may be henceforth iſſued to any perſon or perſons whatſoever, to be executed, *&c.* and this to prevent, leaſt by colour of them any of the Subjects ſhould be deſtroyed or put to death, contrary to the laws and franchize of the Land.

My Lord,

1. The Commiſſions Martial were not evil in reſpect of the perſons commiſſioned, being as this power is to you, ſo thoſe alwayes given to perſons of quality and learning; but the evil of them were their Proceedings by their own will and opinion, being themſelves the Judges, and the Jury; offices incompatible and inconſiſtent with the peoples Liberties, by the former Laws become their rights; when your Lordſhips ſhall read the Act by which you now ſit, I am confident you will grant this power to be of the ſame nature, though not under the ſame name, and conſequently in that Petition complained of, in ſuppoſition that ſuch might be, and enacted againſt in *Terminis*, that none ſuch ſhould be.

2. For that you are called by the Act, Commiſſioners, and yet

have no Commission, but the Act it self; whereas you should, in regard you are not a Court of Record in your selves, have Commissions returnable at a day into some Court of Record, where your proceedings might be extant and visible; & as you are now constituted, you have a day prefixed to determine in; but that being come, you are to vanish, & your *vestigia* will be as inperceptible to the times and men to come, as the trace of a Swallow in the Air, which is inconsistent with the honour and justice of any Kingdome, or of any Christian Commonwealth.

For that you have only by this Act, a bare and single power to ad judg, and cause execution to be done, in case you shall judg it to appertain to justice; but you have no power if you think it appertain to justice, to acquit, and upon acquittal to discharge the person tryed, as is the law expresly in my Lord *Diar*; and in the year-book of *Edw.* 4. grounded upon the Statute of *Henry* the *6th.* 14 of his reign *Ca.* 1. That

Rastdes Case. Dar fol. 120. 10 Edw. 4. fol. 19. 14 Hen. 6. 1. Oath of a Juror.

Justices of *Nisi prius* (who are Commissionary Justices) shall have power of all the cases of felony, and of Treason, to give their Judgment, as wel where a man is acquit of felony, & of treason, as where he is thereof attainted at the day and place where the Inquisition, Inqueſt, and Jury shall be taken; and then from thenceforth to award execution to be made by force of the same judgments, which in an acquitted mans case can only be enlargement.

But (my Lord) you have only power if you can to reach my life, if in your opinion deserving it, but not to reach me out of Prison; so that if you kill me not here with the sword of Justice, you must leave me in worse hands, to be buried alive in restraint and want.

Which all is against the laws of Nature and Nations, and particularly of this land, that are all so ballanced and poysed, as that they have equall regard to the delivery and freeing the Innocent, as to the condemnation of the nocent.

And *Isadore* in his Etimologies sayes of a law, thus,

Erit autem lex honesta justa, possibilis, secundum naturam et consuitudinem patriæ; Loco, temporique conveniens necessaria, et utilis, manifesta quoque, nê aliquid incautum per obscuritatem captione contineat; nullo privato commodo, sed per communi civium utilitate conscripta.

And

And as laws ſhould be, ſo ſhould Courts and the diſpenſers of laws be.

But (my Lord) if this Court muſt be granted to be a Court, your ſelves can make no more of it then a Court, *ex parte*, and ſet up to ſerve a particular end, with the privation of the common utility and liberty, however uſher'd with a preamble of an other ſtile, of preſervation of peace, and prevention of warr; but *Thucidides* will tell you my Lord in his fourth book, That

Turpius eſt his qui impia tenent inſidiare honeſto pretextu, quam inſidioſâ malevolentiâ, uti, nam violentia videtur aliquid juris habere, propter potentiam à fortunâ datam, ſed fraus tantum ab injuſtitia oritur.

The Third Argument.

BUt (my Lord) if your Lordſhip be in your judgment and conſcience ſatisfied, that the Act it ſelf, in, and as to its conſtitution, is good and valuable, and impowereth you ſufficiently to proceed againſt me, ſome way then *Argumenti ergo dato, ſed non juris ergo conceſſo*, that it is a law, or an Act, and that all thoſe Ordinances are out of doores; yet I pray your Lordſhips leave, that I may make evident to your Lordſhip, that you are not hereby conſtituted a Court capable, in defect of the very letter of the Act, to paſs upon any man, and conſequently not upon me, in matter of life, or where life may may be the concernment.

1. For reaſon you are not conſtituted a Court of Record, which is abſolutely neceſſary, having life and forfeiture of lands in your charge.

Wetherel and Darly's Caſe 35. Eliz.

First, For the State that they may have an account, (not in their Council-chamber, but upon Record) what is become of the matter in iſſue, and of the perſon put upon his Tryal.

Apeal de murter convict de Homocide bon al enfeffment per murder.

2. For the Freeman of *England*, that in caſe he be acquitted of the crime wherewith he ſhall ſtand charged before this Court, he might at all times reſort to the Record, upon any new queſtion for the ſame Fact in any other Court holding Pleas of that nature, by which Record to plead his Auterfoyes acquitte, and to make his defence, as alſo to preſerve his eſtate, *Si non legalment*

Affirme quo home ne doit estre, preſus vle Deux fois per uncuoſent.

aquitte en le Poulters Case 9. R. Benefist demant acquittal nul req. si non de Record. as also my benefit, a writ of Conspiracy.

17 Car. Act for abolishing Star-chamber.

So come nearer our own times, the like cause to complain, and the same redress is given in the Act for abolishing of the Star-chamber, upon the grounds and reasons drawn from these Laws; the *Innovations* and *Invadings* upon which (as being *Fundamentals*) was a great part of the substance of the grand Remonstrance, communicated to the whole World against the late King by the Press: The charges against the Earl of *Strafford* and the Arch-Bishop of *Canterbury*.

Articles contra Straffordi. Art. 1, 2. partis 1. 14 parti secundo.

The interest of the Subject in these laws, was cryed up to be so precious, as that it had influence even to the absolving of all old Oathes, and the imposing of new, and to bring to adventure Estate and Life, and soul, rather then to be usurped, or in the least intrenched upon.

Declar. D.c. 15.1641. Jan. 17.1641. July 12. 1642. Oct. 23.1642.

Four several Declarations of the present Parliament have entitulated the subject to them, and to the benefit of the ordinary Courts of Justice, as their Birthright. I have owned the preservation of them to be the Cause of the War. and the ends of their affairs managed by their Swords or Councels, and Gods curse is by them imprecated, in case they should ever decline the Ends.

Declar. April 17. 1646.

My Lord, We have the Parliaments word and promise, not to interrupt the course of Justice in the ordinary Courts.

Jan. 1648.

And in the Ordinance of *Non addresses* to the late King, they say, *Though they lay the King aside*, yet they will *Govern* by the *Laws*, and not interrupt the *Course* of *Justice* in the *Ordinary Courts* thereof.

My Lord, I am entitulated to all these Laws, and these Promises and Declarations; and if this Court proceed against me, those notwithstanding, (the *Ordinary Courts* of *Justice* being open and unobstructed) I am robbed, and divested of them all, and in me the Freemanry of *England* are all despoyled, at the Parliaments will (according to this president) disployleable, and may with Mr. *Stampford* in his Pleas of the Crown, take up this saying, It will serve for a Lamentation,

Misera servitus est ubi jus est vagum, & incognitum.

Toe

The Fourth Argument.

THomas *Acquinus* (who though a Papiſt, is not the leſs worthy to be vouched, where not Religion, but Pollicy, is the thing in queſtion) Sayth, That *Lex eſt regula & menſura actuum agendorum vel omittendorum*, not *Actorum*, and *Omiſſorum*. Beat. Thomas 1. 2. Q. 90. Art. 1.

And St. *Paul* ſays *Concupiſcentiam neſciebam niſi lex diceret non concupiſces.* Rom. 7. 7.

My Lord, your Authority is in two ſeveral places to proceed againſt as Traytors, ſuch who have broken the Articles before they were made, *viz.*

Whoſoever hath, or ſhall Plot, Contrive, or Endeavour, &c. Art. 2.

Whatſoever Officer, &c. hath, or ſhall deſert their truſt, &c. Art. 7. ſhall dye without mercy.

And thus my Lord, the end of Laws and Law-makings is perverted, which are not meerly to puniſh offenders, but to prevent offences, which amongſt Chriſtian men was never otherwiſe done, but by way of premonition; by laws firſt Interdictory, and then Subpenatory.

The Earl of *Strafford* did (and very reaſonably) take it unkindly, and ſo expreſt himſelf upon his Trial; That a neglected Law ſhould lie moulding amongſt old parchments 200 years unuſed and unexerciſed, and at laſt brought out to meaſure his paſſed Actions by, or to uſe his own words, *To lye like a Coal raked up in the aſhes*, to be at pleaſure blown into a flame, and to make him and his family the firſt fewel to feed it. Truly if he had ſeen theſe Articles (as he felt after ſomwhat like them) he would have cried out, and but modeſtly enough, That it is not the mending of the fault, but the deſtruction of the perſon which is manifeſtly deſigned in theſe Articles of *Retroſpection.*

Diſuſage of a law, is ſome excuſe for him who falls into a tranſgreſſion; but the *non exiſtence* of a Law, is a Juſtification to the greateſt offence.

And my Lord, as you are to look backward to Actions done before

before the Law made, ſo you are to take Cognizance of offenders againſt two former Acts, which make the Crimes therein certain in the matters of fact, fault and puniſhment; and if they be lawes, they muſt be deemed part of the lawes of the Land, and defineable and dispenſable by the ordinary Courts of the Land, in caſes Crimmal; for extraordinary Courts of that kind, have long ſince even (by the Parliament, of which this is the ſurviving part) been denied.

And although it is true, that when ſome particular fact is committed by ſome one or more particular perſons againſt the laws Crimi al, it often falls (and properly enough) that eſpecial Commuſſions of Oyre and Terminer are for ſome urgent and expedient reaſon iſſued to try the matter and men: yet thoſe Commiſſions do not reſtrain the Commiſſioners to proceed only againſt thoſe perſons, and upon thoſe particular crimes which the common fame hath rendred *Hac vice* to be Tryable, but run in general terms, and with general enablement to try all manner of Treaſons, Felonies, &c.

And the Reaſon is,

1. For that it might poſſibly fall out, that a grand Jury will not find the Bill againſt *Jo.* at ſtyle, and if not, the Commiſſioners are ſent down without their arrant, if only directed to try, *J. S.*

2. It may fall out, that where there are Treaſons or Felonies commited by *Jo. St.* they may be accompanied with miſpriſions or miſdemeanors, in *Jo. O.* And if the particular crime of Treaſon, and the particular perſon of *J. S.* be only authoriſed to be enquired of, then the Commiſſioners can do but half their work: And therefore this Commiſſionary power of yours (My Lord,) (the ordinary Courts being not obſtructed, and you limited to particulars) is ſo far againſt the Common Law and uſage, that it is againſt common and vulgar reaſon; and (pardon that I muſt ſay it) ſavours more of a Snare, then of a Law; and more of a warrant of Arbitrary Execution, then of an enablement, to and for a judicial and legal Proceeding or Tryal.

The

The Fifth Argument.

My Lord, In all Courts of Justice, as there is supposed to be an equality intended to such as shall fall under their Cognizance and Enquiry, which is a principle of morality innate, as well as a practical Policy: so there have always in this Nation, at least beyond memory, or indeed record to the contrary, been certain Oaths Obligatory, and of indifference administred to Persons either enquiring of, or passing judgment against or upon the Subjects in all cases whatsoever; and the same thing is but necessary in your Lordships and this Court to be done, (if at all you will proceed in so weighty a matter as life) against which I make this exception. Not sworn.

1. If you are at all sworn, you are not sworn in *Conspectu*, and if you will be my Jury and my Judges also, I ought to have a satisfaction that you are so sworn. Had you been only my Judges, and constituted after the ordinary manner, and to ordinary ends, I would have taken your being sworn for granted.

2. If you are sworn, (and to no other words of an oath then what are comprised in the Act) (which my self and all men else will easily believe you are not) then you are not sworn to any manner of Equality.

The words are,

You shall swear that you shall well and truly, according to the best of your skill and knowledge, execute the several powers given unto you by this Act. The Oath of the Commissioners.

I beseech your Lordship, that I may compare these words with the Oath of Judges in *England* when it was a Kingdome. 18 Edw. 3.

The words Pertinent only are these,

You shall swear that well and lawfully you shall serve our Lord the King and his people in the office of Justice, &c. Oath of Justices.

And that you deny to no man common Right, by the Kings letters, or none other mans, nor for none other cause, &c.

I *A. B.* do swear that I will do equal right, &c. according to my best Wit, Cunning and Power, after the Laws and Customs Dalton J. P. fol. 33.

Customs of the Land, and the Statutes thereof made, &c.

My Lord, these will concern you as my Judges, to consider how little the stiles agree, & how far your Oath is in respect of these unobligatory, and consequently unsatisfactory to the persons which are or shall be concerned,

1. As to the first, yours contains no such words of Equality.

2. As to the second oath, yours hath such words as skill and knowledg, holding some resemblance with those of wit, cunning and power. But my Lord, if your words were as well usher'd, and as well paged as those, it were some satisfaction, *viz.*

To do equal right according &c.

After the laws and customes of the Land, and the Statutes thereof made.

My Lord, as you are my Tryers also, as well as my Judges, I beseech you to observe the oath of a Juror, and the difference in sence, (in letter I know for the dignity sake it ought to differ.)

Oath of a Juror.

* *You shall well and truly try, and true deliverance make between our Soveraigne Lord the King, and the prisoner at the Barr, &c.* I presume it is still the same (mutatis mutandis.)

Truly my Lord, when I look upon your enablement to try the matters and persons, which, and whom you are to try; you have power to destroy, and not to save; though rō spare, yet not to acquit, or discharge; and your obligation by oath to execute that power according to your best skill and knowledg, I must needs say, and it is apparant, that when you have destroyed me, you have discharged all the duty that man can exact from you (though God will have a better reckoning) and in stead of being tryed by sworne Jurors, and adjudged by sworne Justices, my self, and all who are or may fall into my condition, are to be tryed by our sworn Adversants, I might have said sworne enemies: and we cannot in reason expect more Justice, then, when the Son layes the wager, the Mother keeps stakes, and the Father is Judg in a point of controversie.

More and better you may do, more or better we cannot by any light of reason expect.

The

The Sixth Argument.

BUt (my Lord) if all this be but wind againſt a Rock, and move you to no declining of the exerciſe of your Power, though againſt my right; yet certainly (my Lord) where your power and my right may be conſiſtent, you will not ſtretch your power to the taking away of my right, but rather by giving me my right, magnifie your power.

My right to be tryed by a Jury, and in their power to try me ſo.

This I may reaſonably expect.

It is my right (granting you to be my Judges) to be tryed by my *Peers*, the good men of my neighbourhood, and it is in your power (if your power be not inward) to try me ſo.

That this is my right I muſt reviſit *Magna Charta*, *Niſi per legale Judicium Parium ſuorum.* M. Ch. 9 Hen. 3. 29.

The Law of *Edward* 1. having confirmed the great Charter, ſaith, *And we will that if* any judgment hereafter be given contrary to the *Poynts* of the Charter aforeſaid, by the Juſtices, or by any other our Miniſters that hold Plea before them againſt the *Poynts* of the Charter, it ſhall be undone and holden for naught. 25 Ed. 1. Ca. 1. & 2.

And upon this very Law or Clauſe, a writ of error was brought by the Earl of *Lancaſter*, for the miſattainder of his brother, whoſe Heyre he was, and in that the Poynts were two, and upon them both, judgement given for a reverſal. Caſes adjudged in the Point. Paſch. 39 Edward 3.

1. *Quod non fuit araniatus & ad reſponſionem poſitus tempore pacis, eo quod cancellaria, & alia Caria Regis fuerant aperta, in quo lex ſiebat, unicuique prout fieri conſuevit.* Jo. of Gaunts Caſes.

Attinctus.

2. *Quod condemnatus ſivi adjudicatus fuit abſque araniamento ſeu reſponſione, ſeu legali judicio Parium, Contra legem, & contra tenorem Magna Charta.*

The like reverſals, and upon the like reaſons, have been had, 4 Ed. 3. Nu. 13.
In the Count *de Arundels* Caſe. Rot. Parl.
In Sir *John* of *Lees* Caſe. 42 Edw. 3.

It is provided, *That no man* from thenceforth ſhould be attached by any accuſation, nor fore-judged of life, nor of limb, Nu. 23. Rot. Parl. 5 Ed. 3. 9.

nor his lands, &c. againſt the form of the great Charter, and the law of the land.

52 Edw. 3. 2. My Lord, our fathers ſaw a Parliament (and reaped the bleſſing of it) which was called *Benedictum Parliamentum*, (which hath circumſcribed the looſe interpreters of *Treaſons* to a ſtandard, and not left it to be *Individuum vagum*) and *there it is ſaid, That* perſons guilty of high *Treaſon* (and my charge is not for leſs) muſt be *provably attaint* of open deed by people of *their own* condition.

Ca. 4. ejuſd. And again it is accorded, aſſented and eſtabliſhed, That from henceforth none ſhall be taken by petition, or ſuggeſtion made to the King, or his Councel, unleſs it be by indictment or preſentment of his good and lawfull people of his neighbourhood where ſuch deeds be done, in due manner, or by proceſs made by writ Original at the common Law: Nor that none be ouſted of his Franchiſes, or of his Free-hold, unleſs he be duly brought to anſwer, and forejudged of the ſame by the courſe of Law; and if any thing be done againſt the ſame, it ſhall be redreſſed, and holden for none.

The like in eff. & in 28 Ed. 3. 3. 37 Ed. 3. 18.

42 Ed. 3. 3. It is Aſſented and Eſtabliſhed (for the good governance of the Commons) that no man be put to anſwer without preſentment before Juſtices, or matter of Record, or by due Proceſs and Writ original, according to the old law of the Land; and if any thing from henceforth be done contrary, it ſhall be void in Law, and holden for error.

My Lord, That it is my right to be tryed by a Jury of 12 men *de vicineto*, is evident; and it is as evident, that if you otherwiſe proceed with me (if law were not out of faſhion) you would but weave *Penelopes* Web, and one days judgment would be unravel'd by the next days Writ of Error.

But after-games for Life are dangerous; and for Eſtate I have no great cauſe to be ſolicitous: but my right is my duty to preſerve, as in relation to my ſelf, and my honour to keep it, if it may be, from being in my preſident taken alſo from my Countrymen the free-men (if any ſuch be now) of *England*, who have equal reaſon, though they may be wanting (ſome of them) of the ſame reaſons wherewith to defend it.

That your Lordſhip may proceed by Jury, for ought is ſaid

ſaid or contained in your Act to the contrary,

This may proceed by Jury.

1. I pray conſider the before recited laws are all unrepealed, and therefore if this law intend to oppoſe thoſe laws, it ſhould have repealed them, or at leaſt have afforded a ſlight *non obſtante*, or have given the Subject the comfort of a *hac vice tantum*, that we might not have thought our ſelves rob'd of all, but only plundered of a part of our right for neceſſity and experience ſake, or at leaſt have given us the favour of the Earl of *Straffords* Act, that it ſhould never be drawn into example; but I am ſure in this Act, that proceeding againſt him is ſuper-exampled.

No repeal or non obſtante.

2. I deſire you would conſider your qualification; you are made Commiſſioners, and that of Oyre and Terminer, and thoſe are not proceeders in their own proper natural and habitual conſtitution and practiſes, upon and acording to their own judgments in matters of fact: you are in theſe words, *viz.*

Required to *hear* and *determin*, &c. conſtituted Commiſſioners of *Oyre* and *Terminer*. fol. 746.

3. You are authoriſed to proceed to Tryal, Condemnation & Execution, &c. but you are not reſtrained to the manner of ſuch proceedings to Tryal excluſively, as to Tryal *per Pares*, but left to do the manner of the Tryal, as well as the Judgment or Execution, as you, or the major part of you, or 12 of you ſhall judge to appertain to juſtice: And if ſuch major part ſhall think fit to proceed by Preſentment and Jury, doubtleſs ſuch your proceeding is no *Premunire* againſt the power given you by the Act, but is juſtifiable to fall within the letter of the Act, and that without a ſtrained conſtruction.

4. And if when you may lawfully (I mean) by your own law, if (*Argumenti ergo*) it be granted a law) try me by a Jury, and will not, then my Lord (pardon me) that I muſt aver, that you take from me, and in me from the communalty of *England* three great priviledges, Franchiſe and Rights; to which I and they are, by the known, ancient, and unabrogated, unrepealed and conſtantly practized laws, entitulated, which will be neither equitable nor honorable for you to do.

1. You take away the benefit of challenge, which I might make to a *Jury* or *Jurors*.

Benefit Challeng.

Scam. pl. Cor. T. Chaleng fo. 150.

And that is contrary to my right which is given me by the Common Law, *In favorem vitæ*, to challenge in case of high Treason (for I go no less) 35 peremptorily, and for reason of challenge Sans Number.

Poynings Case.

This was adjudged in 32 *Henry* 6. abridged by *Fitz. Herbert*, *fol.* 26 *per Challeng.* where 8 Jurors were sworne, the rest challenged, a new return made, and those 8 returned, and though formerly allowed and sworn, yet challenged, and adjudged good,

Sir Wal. Rawleigh, Brookes.

The like allowed in *Hill.* 1. *Ja.* in the Cases of Sir *Walt Rawleigh* and *Brooks*.

If this benefit were allowed me, my Lord, to except or Challenge the whole Court, who are in number and in quality my tryers, as a Jury are, I should not need to be peremptory in my challenge, being furnished with abundant reason.

A Jury of *Middlesex* will be no more nor less, if what I am accused to have endeavored should take effect, and therefore are not less concerned; I cannot say the same of the Court, (or if I should, I should not be believed) and he that but whispers against *Diana* at *Ephesus*, makes all the Crafts-men his enemies.

Acts. C. 19.

2. The second benefit and right, which by denying me a Tryal *per Pares* you take from me, is the benefit of seeing, hearing, and counterquestioning the witnesses produced against me; which in such way of Tryals, ought to be *viva voce*.

Scam. P. C. fo. 163, 164. St. Ph. and Ma. 1. and 2. C. 10. 1 Ed. 6. C. 12. Clav. sult.

That such is the law, Mr. *Stamford* averreth in his Pleas of the Crown. And

In treason, two sufficient witnesses by the Stat. of *Edward* the sixth, sufficiently in relation to their quality, and to the fulness of their testimony.

Cook. 3. p. Inst. fol. 12. Scam. P. C. 164. 89. 1 Ed. 6. C. 12. 1. and 2. Ph. and Ma. 10, 11. 1 Ed. 6. and 16. Eliz. 1.

Sir *Edward Cooke* (an Author as authentick as any) puts this for law in his expositions of the words in the Statutes for Treason *Provablement attaint*; Because the punishment was great, the proof should be punctual, not upon presumptions or inferences, or straines of wit, but upon good and sufficient proofes. And this he makes good by the Authority of *Stamford*, and the several Statutes of *Philip and Mary*, and of Queen *Elizabeth*, and of *Edward* the sixth.

Now

Now, my Lord, an evidence either taken in writing, as the perſon will voluntarily give it, or cautiouſly taken as the examiner will ask it, (who is not ſworne to take it indifferently, no more then the framers of the queſtions are to propound then fairly,) may be a ſeeming faire oppoſite, and a full teſtimony; which upon enquiry into circumſtances, either concerning the perſon giving teſtimony, or concerning the *Modus*, the *Ubi*, the *Quando*, *&c.* the whole laid together may prove either nothing, or a malitious thing.

The Caſe of Sir *Thomas Moor* Lord Chancellor, accuſed for Bribery, is common, and I hope if mine have faire play it will prove no worſe.

3. The third and laſt right and priviledg you take from me, is the many of all the reſt, and to the making of which, (as it ſhould be made up) all the reſt are but conducing, and leading; that is, of a faire Verdict.

My Lord, By a Jury a verdict paſſeth from all, or not at all; & one knowing & conſcientious man, may preſerve that Innocent man, whom eleven either ignorant or careleſs men would deſtroy.

This Courts ſentence is to be ſtated by number of voyces, and ſome of them poſſibly not judging their own Judgments, but concurring where their opinion of anothers Judgment ſhall lead them; which as it was the great evil of the late Court of Star-chamber, ſo whereſoever it is uſed (in tryals of life eſpecially) it is and can be no other then an evil.

My Lord,

By & from a Jury a verdict paſſeth before their diſcharge upon their neceſſary affairs, nay affairs of nature, & therefore will give it both the righter, becauſe their evidence is freſh in memory, without the intervention of other matters, as alſo for that they are without opportunity to be perverted by money, or friendſhip. If this Court receive the evidence to day, they may at any time (before the 29 day of *September* next) give their ſentence; for *vere dictum* I never expect but from a Jury; and in the mean time, how much their own affaires may put the remembrance of me out of their heads, and how much the States power may put my ſafety out of their hearts, I have juſt cauſe

to

to ſuſpect; for fear I will not, being reſolved never to be in love with that life, which the common law of *England* cannot protect; and had rather die the Laws Martyr, then live the States ſlave.

The Cloſe.

My Lord, I have ſaid, and now it only remaines that I tell your Lordſhip, that I deſire you to take into conſideration what I have ſaid; & that you would not ſuddenly, but deliberately give your Judgment, Whether I ought to plead before you as Judges, and to the charge in Articles, and not in a preſentment or Indictment? whether to be tryed without a Jury, & condemn'd upon evidence unſeen? Which this is (& I deſire it may be recorded.) As I do not now wilfully refuſe to plead or anſwer, but offer my reaſons for the ſuſpenſion of my Plea, until your judgment in the points be known and pronounced; ſo, if I be in them overrul'd, I ſhall then give ſuch Anſwer to the charge as ſhall become a man in my condition.

Fiat voluntas Dei, modo in ruinâ meâ.

Eus. Andrew.

3. 7. 2. 1650.

Here the Att. Gen. *Prideaux* put a ſtop to Mr. *Andrewe*, telling him that the Court was not at leaſure to take notice of thoſe law caſes, but of his confeſſion; that he had an affection to act, though nothing acted, was ſufficient Treaſon, and for that affection he deſerved death, and thereupon the Court pronounced ſentence againſt him. Thus was the Birth-right of the Freeman of *England* denyed by moſt cruel murtherers, whoſe only will was their Law.

If

IF I be overrul'd by the Court, that I must either answer or be sentenced for my wilfulness,

Then I move that I may have a Copy of my charge, and a day assigned me to deliver in my Answer under my hand.

Upon these Reasons.

1. If the Court proceed upon Articles, they cannot in reason conceive that I can plead the general issue to particulars; for in so doing, in case I be convinced of any one Article, I shall receive the doom of all. Gen. issue to particular Art

2. For that *De facto* some of the Articles may be true, yet *de modo* they may not be valuable against me, and upon the general issue, I shall not be received to qualifie fact with circumstance, & so in stead of being allowed the freedom of my defence, which is allowed to every thief at Newgate, I shall be tryed and snared by such confession or proof as will serve the turn of my prosecutors, and not preserve my self by making my self and actions understood. De facto & de modo.

The Articles are of several kinds and crimes, and as one single Plea will not be applyable to them all, so it is but requisite that I have a Copy of them, to give thereby to each one his proper Answer, which though in Indictments is not allowed, yet in this way of proceeding was never denyed in the most Arbitrary Courts. Several crimes & several Answ. necessary.

The Council Table gave a charge, and received answer in writing in cases of contempt against, themselves or their commands. Practice of Council table, Star chamber, High Comission, Spiritual Courts, Lord Strafford, Arch Bishop of Canterbury.

The Star-chamber afforded the Defendant a Copy of the Bill, and liberty to examine and cross examine witnesses, in case the fact charged were denyed by the Answer.

The High Commission the like, by their Articles and proceedings upon them.

My Answer, if not in writing, may either not be understood, or misapprehended, or miss set down by the Clerk, to my prejudice.

If this be denyed me, then I must conclude they intend to wipe of my head with the smooth glazed sword of pretended Justice, Pretended Justice but intended malice.

Justice, and must apply my self to my memory, in reference to the charge, and shall hear it read, which by my own knowledg of what hath passed between the State and me, I may conjecture, and therefore prepare these following heads to help memory, which in a case of so much concernment, is not totally to be relyed upon.

First, As to what may be alledged against me in general terms, as a disaffected person, and oppugner of the State, or otherwise, &c.

There are two things which draw subjection, and oblige persons to a Commonwealth.

1. Protection in the State.

2. Personal engagement, or fealty in the Subject.

First, Protection I have received none, but stand in the condition of a proscribed person.

1. State (if any) sequestrable, and not permitted by the laws of the nation to vindicate it.

2. Calling taken away, which the Turke would not have done, had he been conqueror.

Hyl. Proc'amation of remove to each mans dwelling part of the remonstrance, against him.

3. Dwelling not permitted where I can subsist, but where I may be obnoctious to want, and to the States infliction of punishment, when they shall take occasion to repeat upon me any thing which they shall call a crime, in reference to my passed Actions for the late King, and my now Soveraign.

4. Right I can have none, unless I will damn my soul to preserve my estate, or repaire my wrong by a contra-legal and contra-evangelical engagement.

Declar. 17. April 1646. Ordinance Non addr. in Jan. 1648.

This was sufficient reason, owned and justified by the Parliament for their substraction of obedience, ὁ Βασιλεὺς ὁ Πρωτομάρτυρος λαῶν, by their Declarations, and Ordinances.

2. Fealty or personal engagement I have given none *viz.*

1. I have not taken the Protestation of *May* 1642.

2. I have not taken the solemn Oath and Covenant, yet if I had, I might have justified my Actions by them.

3. I have not taken the negative Oath, because my oath of Allegiance (from which no man can absolve me) is a negative to that, &c.

4. I

I have not taken the present engagement, much more against my oath of Allegiance then the negative oath.

If I had had so little conscience as to have taken them, I would have had so much as to have kept them; and the State cannot in reason expect from me, or any other, that we should take a second, when we see no conscience made of keeping the first; and to take a third, the first and second being broken, without other dispensation then Power, which like *Alexanders* sword cuts the knot which it can not untye.

Neither hath any man assurance, if he should take the last engagement, that he should have liberty to keep it longer then the fancie of the State held to the now new fashion of Government.

And therefore I stand clear as a down-right subject of *England*, to stand or fall by the Common Laws of *England*; and if they will deny me that, they deny my Birth-right, which is equally righteous, and no more just, then to deny me my estate, my calling, my abode, my means of right-

Secondly, As to my action at *Linton*, I justifie my self by the late

1. Kings Commission, which my accuser knowes I had, and under which he was by the same King constituted my Major.

2. [a] What was done, was so done, when he who gave me the Commission was in being, and oppressed by injurious imprisonment, and what I did was in order to his enlargement from his Thraldome, and restorement to his lawfull power, which was that to which my duty as a Subject by my oath of Allegiance did bind me in general termes, and the duty of my qualification in particular obligation.

It was done before the now reputed Parliament were, or pretended to be the Supreme Authority of the Nation, or had assumed the power of Government, or were fram'd into a State, & consequently I am not answerable to them for any opposition to them, further then the Common Law binds to Parliaments without their head, & hand, or defective in their members; & as to such offence (if it be one) this Court is not qualified to take any cognizance.

Thirdly, As to the design concerning the surprise of the Isle of *Ely*, it was but a bare discourse or communication, and no

[a] Gordian. Foreseeing his murder in this maxime, That Kings never survive their powers and liberties.

11. of Hen. 7. Ca. 1. That the Subjects of this realm are obliged by reason of their allegiance to serve the Prince. For if time being in his wars for defence of him and the land against every rebellion power, and might rest against him within the land or without; ought not to suffer in life, member, estate nor office for so doing. Col. Gibsons Case in 2. war at the Castles in Kent.

formal design said, agreed unto, nor person engaged in it, so much as by promise.

And in Cases of conspiracy against the lives of Kings, there were some statutes made, that very words and communication should be reputed Treason; but all repealed, or expired.

And not thought fit by wisdome of Law-makers (having indisputable power to make Laws) to be revived since the dayes of Q. *Mary*, notwithstanding those very many treasons hatched & designed against Queen *Elizabeth*, and King *James*, &c.

If in the highest point of treason, communication be not treason against lawful Princes, certainly, an affection where the offence (such as it is) is of a far inferiour nature of it self, (so it had a far inferior object, or subject concerning whom such discourse was holden.

Fourthly, As to my supposed corresponding with the King, the Lord *Hopton* and Earle of *Cleveland*, (if true) it was so long since, as that it fals not within compase of this Courts Commission to try, *being confin'd to infant matters of a year old*, and my charge not exhibited to the Court of Justice before Munday the 15 of *July*. My last letter received from Lord *Hopton*, bears date at the *Hague*, 18. or 28. of *June*, and was received in two dayes into *Sussex*.

In the second Act.

Fifthly, As to the Drawing, Signing, Sealing of the engagement, it consists of several branches.

That *De facto* I did it, and must not deny it, because I have confessed it, which was more then needed, to them who knew it without enquiry; for I dare aver, that they had their instrument, by them imployed, and cherisht in betraying me to it.

And have some years past had a man in my bosome to watch me and my motions, which I did affirm to the Lord President, and he not denyed, but said, it was no more then did become any State to do, who had so much cause to hold an active man in suspect, as they had me, having never come in, and laid down the Cudgels, but held to my principles, and was ready upon every occasion to take fire.

And this I will prove, if I have legal (or because that word is worne out of use) fair dealing from the Court. And

Out of that I may justly infer, what will be visible enough that,

that it is the States Act, and but my consent, and they in no danger of me, but that I should preserve my self from their new laws, into the lapse of which I was not otherwise, or by any other action fallen.

As to the parts of it.

1. It consists of an oath of Secresie.

2. An owning of *Charles* the Second to be such.

3. A resolution to endeavour to make him such.

4. A crimination of the State, under the names of Rebels, and oppofers, who would not have him to be such.

To these as they are ranks.

The oath of Secresie hath relation only as to the not discovering the co-engagers in that resolution, & the resolution it self being not Treason, the oath of keeping secret that resolution is not greater then the thing resolved. These two will interweave.

1. The thing resolv'd was to endeavour, but was not an actual endeavouring.

2. If it were an actual endeavouring, yet it can only be supposed that it must be endeavoured by a warr to be levied; and the endeavour to levy a warr never actually leavyed, is not treason against the King, against whom only, and his relations, by our old laws, which are Laws, a treason can be committed; and petty-treason I am not accused for.

That a bare intention, resolution, or engagement to levy a warr is not treason, I report my self to my Lord *Cook*; who tells us, (and he is a man of credit) in his Book (printed and allowed for law by the Houses when they were two) that a conspiracy (and this engagement amounts not to so much, but rather to an intention only to conspire) to raise a warr, (as hath been said, and so resolv'd,) is no treason by the Act of *Edward* the third, until the warr levyed, as within it, to be reached by those words in that law, (*ouert fait*;) and if it were not treason in those words in the original it fals not within the words of the translation of this new born law, *viz.* by any *open deed*. Coo't. 3. p. Inst. fo. 14. and 38. 25. Ed. 3. Ca. 2. Open deed.

So as the first and third branches of the engagement which are interwoven, and what ever I conclude that neither of them, that is to say, neither the oath, nor the resolution, are treasons either

either within the old, or the new laws, either in respect of the persons against whom, or the progress made in the thing it self.

2. As to the owning of *Charls* the second, it falls not within your Law; for that it is not a Publishing, Proclaiming, or publickly Declaring his Title; The words of the Act are, [*Proclaim, Declare, Publish, or any way promote*] which pro-
30 Jan. 1648. moting is matter of Action more then a private owning.

And this by the Oath it self was not to be published, nor could, without publishing the Engagement it self, which was contrary to the Oath.

And though it may be objected, that the raising the warr could not be done, but by a publishing his Title, and the Engagement at last; yet that, if it be granted, was no forwarder then in intendment; no more was this publishing, and being not done, falls not within your Act.

The crimination of the State is but guessed at by implication (for they are not named) to be meant, and I believe your law reaches only to things literal, and not constructive only; and for the word Rebels, I hope they will not take that to themselves, and the word opposers is a very innocent expression, and at the worst is all but a scandal.

Lastly, Be this Engagement what it will, yet the terms upon which I signed and sealed it were such, as that it was my act not absolute, but upon condition, and to be undone and avoided, in case of the *non-engaging* of others, by the States decoy assured to be ready to do it; and at whose instance, and for whose satisfaction it was pretended to be desired at my hands.

If the Court proceeds by way of Indictment, then I shall move, that those persons may be confronted, whom in my Narrative, Examinations and Letters I have named; and that I may demand of them, &c.

As also that Major *Parker* may be produced to be likewise demanded of, as a person by me lately, and since my papers sent to the State, discovered to be of the Plot to betray me.

If the Court proceed by way of Articles, and upon Examinations taken against me; I desire, and that it is but reason, that I may examine my defence, as in all Courts, where such proceedings were used, was allowed.

If

If it be objected, That it was not used in cases of Treason, I answer, it it true, if they hold the ancient way of Tryals, not; but if they proceed this way, it is but just; and otherwise the Court are at liberty to use all means, publick or private, to catch me; but I have none to defend my self: So that it appears that they seek not to do Justice, but Execution.

And whether they be confronted or examined, these questions are to be propounded, either *viva voce*, or *Interrogatory*; and if by Interogatory, I must stand upon a fair way of Examination, *viz.*

That some one from me, as well as one for the States behalf, may be present, and set down the examinations or depositions; and that I may have a Copy of them as well against me, as for me, as well taken already by the State, or to be taken upon my motion.

The Questions.

1. Whether he knows Major *Barnard*? how long? &c. What communication and correspondence concerning me, or my actions held between them? Whether he knew of the supposed design against the Isle of *Ely*, and of the late Engagement? how he knew them, and upon what reason, and to what end discovered to him, and by whom? Major Parker.

2. whether he did inform the State (or any member of the Councel) of them, and how long he hath so informed?

3. Whether he ever had in his custody the Engagement under the hands and Seals, and my letter to Sir *John Gell*? if so, where, and whether not at *Gravesend* at my being there? Whether he were sent to watch mee, and knew of my being there, before my being apprehended?

The same questions (*mutatis mutandis*) to be propounded to *Barnard*; and farther to him, and to *Benson*, *Holmes*, *Ashley*, *Smyth*, as they are marked.

4. Whether he did propound in both designs to me, or I to him? Whether I sought him, or he me? In what disposition he found me, upon the time by the Act limited for departure, &c. Barnard.

5. Whether he were real to me in the particulars of persons, confederates or moneys, ready to engage and to be advanced, and if not, then to what end he faigned these to me? Idem & Benson.

6. Whether

Bar. & Benson. 6. Whether the Letters by him to me produced from *Smyth* and *Thach* or *Thatcher*, were true, or feigned? and if feigned, to what end, and by whom set on work?

Bar. 7. Whether he were set upon me to watch my ways and motions? And whether he were not promised, or did design unto himself profit for the discovering of me, and such whom I should bring in?

Bar. & Benson. 8. Whether I fram'd, or ever read the said supposed design? Or was to be *de futuro* acquainted with it?

Bar. Benson Holms. 9. Whether he brought, or I sought *Benson*, or *Holmes*? And whether confederates with him, or designed upon by him?

Ashley & Ben. 10. Whether my engagement were absolute, or conditional, and what I signified at my departure, and upon *Barnards* not comming, and where *Barnard* was pretended to be, and where he really was? what promise I had concerning the return of my engagement in case Sir *John Gell* did not engage at *Gravesend*?

Ben. & Holms. Mr. Pit subscribed to the Coppy of the Letter, Smy. Bar. & Benson. 11. Whether Copies of Letters weekly shew'd to me, were reall or feigned? and if feigned, why pretended to be real?

12. Whether were there really any *Kentish*, *Dorset* or *Buckinghamshire* men, and who confederates? &c.

These preparations formerly made in rough notes, were transcribed and put into form, and finished the 8 day of *July* 1650. by Gods good assistance; notwithstanding my abundant disadvantages of close Imprisonment, and want of Books, or Advice; and I commit and submit the issue to God, whom I beseech to fortifie my spirit, and enlarge my understanding when they shall come to be made use of; my self resolving to be the Laws confessor while I live, and (if called to it) to be the Laws *Martyr* when I die by the hand of the impending violence, under the specious name of Justice.

Sed terra astræa reliquit,

Judica me Domine ne in furore, &c.

EUS. ANDREWE.

8. q. 2. 1650. *Domini.*

Mor-

Mortem minatur Deus, ut mittat in mortem.
Vis in timore securus, esse, securitatem timet.
Nil tam longe abest a nobis quam ipsi nos.
In manibus Domini sunt exitus mortis.
Arumnarum requies Mors.

Fraus fidem in parvis sibi præstruit ut cum opere pretium sit cum majori mercede fallat.

His Exceptions to his Tryers.

John Hurst Esq; a man who hath had his hand in blood, *viz.* Mr. *Bartin Hazelrigge* in a duel, for which arraigned, &c. Bartin Hazelrigge.

A person trying, *viz.* a Juror, and in this way of Tryal he is such, ought to be a freeman, *viz.* not only free in person, but in his prejudicating opinion; which he is not, having published that the respondent was the greatest Traytor in *England*, and that there was enough under his hand to hang him the Respondent.

Sir *William Roe*, Captain *John Stone*, two of my tryers were imployed to examine the Respondent, on the 2. of *July* 1650. and brought with them all the evidence against him, and therefore in their capacity of my triers, by the rule in Challenges, they are challengeable, and incapable to sit.

The last Will and Testament of Collonel Eusebius Andrewe, 14. *of* August, 1650.

IF it be the unalterable, and uncontrollable will of God, that I *Eusebius Andrewe* Esquire, shall for my manifold and high provocations of his Divine Majesty be shipwrackt by that storme which at present impendeth over my head; I most humbly and cheerfully submit unto such his good will and pleasure

pleasure; freely and from the bottome of my heart forgiving my betrayers, prosecutors, and Judges, and all other my injurers, as I desire him for his Sons my Saviour *Christ Jesus* sake to forgive me my many and enormous transgressions; and do lay down my life, (though under his present wrath, yet) with a sober confidence of his reserved favour: And desire that my body may be privately interred in the Parish Church of *Alhallowes, Barkin London*, as neer as may be to the Reverend Arch-Bishop of *Canterbury*, there with him to expect a joyful Resurrection, at the comming of *Christ* to Judgment; of which through his merits, and through them only, I am right well assured.

I beseech God to bless my Daughter *Matilda Andrewe*, and to supply unto her, what by my improvidence, (& the accidents of the late tempestuous times, in which I could not swim to Riches without the drowning of my conscience,) is in my being taken away become deficient; and that he would preserve her from want, and dishonor, and from being by any evil Counsel or Example led aside into the foul errors of this Nation, in matters concerning her Souls health. And to that end, I hereby give her and the whole world an account of that faith and profession, wherein by Gods assistance I shall be found at my death, and shall seal with my blood; and in which I pray to God, she, and all my dear friends (whom I spare to name, because I love them) may live and die.

I renounce all dependance upon the *Pope* and Church of *Rome*, and that out of a serious consideration of their adulterate errors and doctrines, inconsistant with the truth and light of the Gospel; and not meerly out of habit, as being bred a Protestant, nor out of the general noyse now made against them, as if all the evil in the Land were from them: For so abominable have been the actions of the *Presbyterians* on the one side, and the *Sectarians* on the other, that if I had not both found my conscience and judgment unsatisfied in the Romish Doctrine, and my soul comforted in hope of Gods returning in favour to his late mutilated Church, I had long since profest my self a *Roman Catholick*, rather then have submitted to the multiplyed Tyranny of the one, or the Babylonish confusion of the other.

I

I have hitherto liv'd, and reſolve (by Gods gracious aid) to dy a true proteſtant; that is to ſay, a member of that Church, and profeſſor of that faith, and obedient to that diſcipline which hath been profeſſed, and maintained, and exerciſed in *England*, in the reign of Queen *Elizabeth*, King *James*, and *Charles* the Martyr; which I truſt God will again reſtore to its former purity and power.

I look upon the Presbyterian, as upon one whoſe diſcipline is inconſiſtent with, and improper for the natural and long habituated Government of this Kingdome and Church, and the Author of all this Lands miſcheifs, in the ſupplanting that ancient and Apoſtolical Governance by Biſhops, and the taking away of the life of the King, by expoſing him to the madneſs of the Independent, by their firſt opening the gap to Anarchy and confuſion in Church and State, by breaking the Golden Chain of either due prerogative.

I conſider the Independent, as fire out its place, which is alwayes miſchievous; who hath already given earneſt (in his making a ſuperſtructure upon the Presbyterians baſis,) for his performing the whole work of confuſion upon Religion and Law, if God prevent not by confounding their politick Councils, as much as themſelves have done their Fanatick opinions: God in his good time put a hook in their noſtrils, and their *Leviathans*.

Of thoſe to whom I am any wayes indebted, I ask their pardon, it not being my intendment, in caſe God had pleaſ'd to have preſerv'd me from the ſnare and violence under which I am fallen, to have been (to my power) irreſponſible to any.

I deſire ſuch who approve my profeſſion, to cover my faults in their charity, and to let me be ſweet in their memory. As for the reſt, I wiſh them a ſeaſonable repentance, but ſet no price upon either their opinion or report.

Vivat Rex, currat Lex, floreat grex, fiat voluntas Dei, modo in ruinâ meâ.

EUSEBIUS. ANDREWE.
14. Aug. 1650.

A Letter from a friend to Colonel Eusebius Andrewe.

Friend,

YOu have been long the ſubject of my prayers, now take my councel; while I am not able to do what I would, accept of what I can.

I hope I ſhall not need divert your thoughts from the fears and terrors of death; you are too well acquainted with that Monſter, to ſhrink at his menaces; you know the Statute, *All men once to die*; your death is accellerated by the malicious machinations of a bad man, under the name of friend; if he had not betrayed you, a Feaver, or other violent diſeaſe, or 1000. other miſchiefs would have done it; a few inches of time are cut from your life, be not you offended to haſten to your immortality; you would have been glad to have been freed from your priſon, let not your ſoul be clouded while it haſtens to its glory; do not look to the next cauſes of ſuffering, ſo much as to that providence which orders all things wiſely to the glory of his name, and the ſalvation of your ſoul. (I atteſt your own conſcience) Had you died under the bloody hand of War, or in the height and heat of your youthfull aberrations, could you have appeared ſo chearfully before the great Tribunal, as now in this time of humiliation and preparation you may? May be, the unworthy condition of your betrayer, works your diſpoſitions to high indignations; yet your dear Saviour betrayed by as great a pretender, ſaid no more, but, *Doſt thou betray me with a kiſs?* Strange way it was (then,) but from that arch-traytors example, its now become familiar; Do not entertain animoſities againſt your Judges; you know who ſaid, *Father forgive them.* And that great Martyr (dying,) *Lord lay not this to their charge.* Be aſſured they muſt (one day) give an account of your ſentence, before an higher Court of Juſtice. If they have rightly judged, complain not; If they have done you wrong, you know to whom vengeance belongeth;

belongeth (shortly:) In your patience, possess your soul that time you have to live, abandoning all thoughts and cares of this world; study how to appear before the judgment seat of Christ, to give account for your 42 years; consider what answer to make to that Judg which renders to every man according to his works; let all your disquisition be, what to do to obtain Eternal Life.

Much I have to say to that question; Reduce all to these two, those two ways which Almighty God has chalk'd out for all men to Eternal Glory. One of innocency; the fathers before the flood had none other, those after were directed by that; Our blessed Saviour resolves that question, *What's written in the Law, that do, and thou shalt live.* Consider first, how far or right you have walked in this way; but if you perceive your aberrations, despair not; our good God has propounded a second way unto that end; it's humble penitence; If you have erred from that good way, come into this; Repent you truly for all your sins; Afflict your soul for offending your merciful Father; Implore his pitty, mercy and pardon, and your Soul shall live. Remember you have a most gracious God, *That desires not the death of a Sinner, but rather that he should repent and live.* You have a blessed Mediator, Intercessor, Saviour, who dyed for your sins, and rose again for your Justification; and be assured, *Whosoever believeth in him shall not perish*; be confident, he *that believeth on him, shall live though he die*; and he *that liveth and believeth on him, shall not die Eternally.*

I am straitned, while I would direct you in all the steps of this way, which are humble Confession, hearty Contrition, serious Detestation, and (so far as you are able) real Satisfaction; These four.

I have already exceeded the limits of an Epistle; what is wanting, I shall beseech you to make your addresses to the most learned and reverend Bishop of *Ely*; intreat his help and direction, follow his counsel, implore his absolution, and consider how much gain it should be to you, though you lose all the world, so your Soul may be saved.

The God of all goodneſs in mercy look upon you, direct you by his Wiſdom, guide you by his Counſell, comfort and ſanctifie you by his holy Spirit, that alone ſhall make you wiſe unto Salvation, and lead you through all the miſeries of a perplexed life and untimely death, to that glory which is beyond my expreſſion and your apprehenſion, is the daily prayer of your real partaker in all your ſufferings.

Auguſt 17. 1650.

Mr. Andrewe, *his anſwer to the aforeſaid Letter.*

Friend,

YOur words ſent to me were ſuch and ſo ſeaſonable, that I have given them the ſame entertainment and lodging as becomes me to afford to Apples of Gold with pictures of Silver; and if I be after my decollation diſſected, you may find them in my heart, where your ſelf have always held a Manſion.

If fear were abſolutely a neceſſary paſſion by which to denote a man, I muſt as yet be accounted amongſt ſome other ſpecies of animality, there being not a ſcruple in the whole frame of my mind and body of ſo tenuous a Compoſure. *The fear of Iſaac* hath baniſht all other dreadings.

I look upon death, as upon that rod in the hand of God, with which he would not have corrected me, if leſs correction had not been unprevailing; and which he doth now exerciſe upon me, becauſe he is reſolved not to let me be leſs then a ſon beloved; and I am content to bear the ſtripes, and kiſs the Inſtrument.

I am ſorry that my rod is bound together with the ſin of my betrayer, and wiſh him repentance, that when the Rod comes to be burn'd, he ſuffer not in the flame. I ſhall not need to ſay I forgive either him, or my Judges, having already forgotten them in all, my prayers excepted.

I am proud and covetous to be releaſed from the double impriſonment I lie under, of the fleſh, and bonds, and am ready for the opportunity to make my eſcape, though in a fiery Chariot. All things betwixt me and God are removed from my ſight, and I ſee him clearly without reflection upon my accuſers and Judges, and ſubmit cheerfully to his fatherly diſpenſation and judgment.

It is Gods mercy that I was not long ſince conſumed; for an earlier death, in my heats and follies, had not proved leſs then a total conſumption of all, which now will become precious in deſpight of ignominious Death, or attending nauſeous Corruption.

My betrayer wanted only *Judas* his ſubject to make his ſin as great, being tranſcendent to his in the circumſtance; and I wiſh him *Peters* tears to waſh away *Judas* guilt, and to avoid *Judas* his puniſhment, by *Peters* repentance.

My Judges have done me no wrong; they have a law for their warrant, and my confeſſion for their evidence; neither have capacity to be Chancellors in matters of life; let them go free, and the Law-makers and inforcers of it, for their errors of conſtituting them, before the padling in blood grow too cuſtomary to be thought a ſin worthy their confeſſion or ſorrow; which I deſire for the ſakes of their ſouls, and the lives of the oppreſſed, and indeed proſcribed Free-Chriſtians of the Nation.

The Fathers Plea of Innocence I cannot make, but I can ſay, (and bleſs God that I can ſay) *Veri penitence eſt pene innocence*; I have erred, and cannot ſay I have voluntarily returned, but I am graciouſly brought home, as a loſt ſheep, not to be eternally ſlaughtered, but put again amongſt the flock, to be kept ſafe under the ſtaff, as well as the rod, for the great ſhepherd of my ſoul Chriſt Jeſus.

I dare not tell you I have not ſinned, you are a witneſs againſt me, if I had none within me; but I can tell you what my faith dictates to me, and Gods holy Spirit aſſures me, that the Lord hath put away my iniquity.

I am already ſenſible (and that in a meaſure unexpreſſable) of Gods goodneſs to me; who as he will be glorified upon me

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on earth, so he hath given me an earnest of my future glory in heaven, by the sweet perfume he hath cast upon my name amongst the people, and the Christian-like compassion he hath begotten for me amongst all men, who have yet an eye of expectation upon his return in mercy to this poor distressed Nation, and oppressed People. The God of all goodness hath in mercy looked upon me, directed me, counsel'd me, comforted me, and sanctified my affliction to me; and I am ready to fall into his mercifull hands, as soon as the heavy hand of the Executioner shall have given a *Nunc dimittis* to.

Tower, *August.* 19. 1650.

Your old and constant Friend.

EUSEBIUS ANDREWE.

The

The laſt ſpeech of Colonel Eusebius Andrewe, *on the Scaffold on Tower-hill,* Auguſt 22. 1650.

THe Lieutenant of the Tower delivering the Colonel to the Sheriff, ſaid, he had brought him thus far on his journey; The Col replied, I hope I ſhall neyther tyre in the way, nor go out of it.

When he came on the Scaffold (kiſſing the Block) he ſaid, I hope there is no more but this block between me and heaven. After he had been ſome while on the Scaffold, he ſpake to the people as followeth.

Chriſtian Gentlemen and good people, your buſineſs hither this day is to ſee a ſad Spectacle, a man brought in a moment to be unmann'd, cut off in the prime of his years, taken from further opportunity of doing ſervice to himſelf, his friends, the Common-wealth, or eſpecially to God. It ſeldom happens but upon very great cauſe; and though (truly) if my general known courſe of life were enquired into, I may modeſtly ſay, there is ſuch a moral honeſty, as ſome may be ſo forward as to expoſtulate, why this great judgment is fallen upon me? But know, I am able to give them and my ſelf an anſwer; and out of this breſt, to give a better account of my Judgment and Execution, then my Judges themſelves, or you. It's Gods juſt diſpleaſure towards me, for my ſins long unrepented of; many judgments withſtood, and mercies ſlighted; therefore doth my gracious father chaſtiſe me with this correction, that he may not loſe me; and I pray you aſſiſt me with your prayers, that this rod may not be fruitleſs: That when under his rod I have laid down my life, by his ſtaff I may be comforted, and received into Glory.

I am very confident, by what I have heard since my sentence, there is more exceptions made against the proceedings against men, then ever I made; my Tryers had a Law, and the validity of that Law is indisputable for me to say against it, or to make a question of it: I should but shame my self and my discretion: In the strictness of the Law, something is done by me, that is applyable to some clause therein, by which I stand condemned; the means by which I was brought under that interpretation of that which was not in my self intended maliciously, being testimony given by persons whom I pitty, so false, yet so positive, that I cannot condemn my Judges for passing Sentence against me, according to legal justice; for equity lies in higher brests. For my accusors, or rather betrayers, I pitty, and am sorry for them; they have committed *Judas* his crime, I wish and pray for them, St *Peters* tears; and I wish other people so happy, they may be taken up betimes, before they have drunk more blood of Christian men, possibly, less deserving then my self.

It is true, there have been several addresses made for mercy, and I will lay the obstructions to nothing more then my own sins; and seeing God sees it fit (I having not glorified him in my life) I shall do it in my death, I am content.

I profess in the face of God, particular malice to any one of the State or Parliament, to do them a personal injury, I had never; for the cause in which I had a great while waded, I must say, my engagements and pursuance in it hath laid no scruple upon my conscience; it was upon principles of Law, whereof I am a professor, and upon principles of Religion, my judgment rectified, and my conscience satisfied, that I have persued these wayes; for which (I bless God.) I find no blackness upon my conscience, nor have I put into the bed-role of my sins.

I presume not to decide controversies, I desire God to glorifie himself in prospering that side that hath right with it, and that you may enjoy peace and plenty here, when I shall enjoy my God.

In my conversation in the world, I do not know where I have an enemy with cause, or that there is a person, to whom I have

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regret; but if there be any whom I cannot recollect under the notion of Christian men, I pardon them as freely as if I had named them; yea, I forgive all the world, as I desire my heavenly Father for his Christ to forgive me.

For the business of Death, it is a sad Sentence in it self, if men consult with Flesh and Blood: But (truly) without boasting I say it, or if I do boast, it is in the Lord, I have not to this minute had one consultation with Flesh about the blow of the Axe, or one thought of it, more then my pasport to Glory.

I take it as an honor, and I owe a thankfulness to those under whose power I am, that they have sent me hither to a place, however of punishment, yet of some honor, to dye a death somewhat worthy my Blood; and this courtesie of theirs hath much helped towards the satisfaction of my mind.

I shall desire God, that those Gentlemen in that sad Bed-rol to be tryed by the High Court of Justice, that they may find that Really there, that is Nominal in the Act; *An High Court of Justice, or Court of High Justice*; High in its Righteousness, not in its Severity: no more clouded with the Testimony of folk that sell Blood for gain. *Father forgive them, and I forgive them, as I desire thee to forgive me*

I desire you now to pray for me, and not give over praying until my last moment; that as I have a very great load of sins, so I may have the wings of your prayers assisting those Angels that shall conveigh my soul to Heaven. And I doubt not but I shall there see my Blessed Saviour, and my gallant Master the King of *England*, and another Master which I much honor, my Lord *Capel*; hoping this day to see *Christ* in the presence of the Father, the King in the presence of him, my Lord *Capel* in the presence of them all, and my self with them, and all Saints, to rejoyce for evermore.

Dr. Swadling. You have this morning, in the presence of a few, given some account of your Religion, and under general notions or words, have given account of your Faith, Charity and Repentance: (then speaking to the standers by) if you please to hear the same questions asked here, you shall, that it may be a general Testimony to you all, that he dyeth in the favour of God.

(*To the Colonel,*) Now, Sir, I begin to deal with you; you

do acknowledg, that this ſtroke you are by and by to ſuffer, is a juſt puniſhment laid upon you by God for your former ſins.

Col. Andrewe. I dare not only not deny it, but dare not but confeſs it. I have no opportunity of glorifying God more, then by taking ſhame to my ſelf; and I have a reaſon of Juſtice, for juſtifying God in my own boſome, which I have intruſted to yours.

Dr. You acknowledg you deſerve more then this ſtroak of the Axe, and that a far greater miſery is due to you, even the pains and torments of Hell that the damned there indure.

Col. I know it is due in righteous judgment; but I know again, I have a Satisfaction made by my elder Brother Chriſt Jeſus, and then I ſay it is not due; it's due to me, but acquitted by his Mediation.

Dr. Do you believe to be ſaved by that Mediation, and no other?

Col. By that, and that only, renouncing all Secondary Cauſes.

Dr. Are you truly and unfeignedly ſorry before God, as you appeare to us, for all theſe ſins that have brought you hither?

Col. I am ſorry, and can never be ſorrowfull enough, and am ſorry that I cannot be more ſorry.

Dr. If God ſhould by a miracle, not to put you to a vaine hope, but if God ſhould, as he did to *Hezekiah*, renue your days, what life do you reſolve to lead hereafter?

Col. It is a queſtion of great length, requires a great time to anſwer; men in ſuch ſtreights would promiſe great things; but I would firſt call ſome friends to limit how far I ſhould make a Vow, that I ſhould not make a raſh one, and ſo offer the Sacrifice of fooles; but a Vow I would make, and by Gods help endeavour to keepe it.

Dr. Do you wiſh health and happineſs upon all lawfull authority and government?

Col. I doe prize all obedience to lawfull Government, and the adventuring againſt them is ſinful; and I do not juſtifie my ſelf (what ever my judgment be) for my thus venturing againſt the preſent Government; I leave it to God to judg whether it be righteous; if it be, it muſt ſtand.

Dr.

Dr. Are you now in love and charity with all men? do you freely forgive them?

Col. With all the world freely; and the Lord forgive them, and forgive me as I freely forgive them.

Dr. You have for some late years laid down the Gown and took up the Sword, and you were a man of note in these parts where you had your residence; I have nothing to accuse you for want of diligence in hindring, in doing of injuries; yet possibly there might be some wrong done by your Officers or those under you to some particular men; if you had your Estate in your hands, would you make restitution?

Col. The wrongs themselves you bring to my mind are not great nor many; some things of no great moment; but such as they are, my desire is to make restitution, but have not wherewithal.

Dr. If you had ability you would likewise leave a Legacy of thankfulness to Almighty God; something to his poor Servants, to his Lame members, to his Deaf members, to his Dumb members.

Col. My will hath been alwayes better then my ability that way.

Dr. Sir, I shall trouble you very little farther; I thank you for all those heavenly *Colloquies* I have enjoyed by being in your company these three days; and truly I am very sorry I must part with so heavenly an associate: we have known one another heretofore, but never to Christianitie before: I have rather been a Schollar to learne from you, then an instructer.

I wish this Stage whereon you are made a spectacle to God, Angels and the World, may be a School to all about you; for though I will not diminish you sins, nor shall I conceal or hypocrize my own, for they are great ones between God and my self; but I think there is few here have a lighter load upon them then you have, if we consider things well; and I only wish them your repentance, and that measure of faith God hath given you, and that measure of courage you have attained from God, and that constant perseverance God hath crowned you hitherto with.

Col. His Name be praised.

Here the Doctor prayed with him almost a quarter of an hour, after which the Colonel turning himself again to the people, spake as followeth;

One thing more I desire to be clear in, There lyeth a common imputation upon the Cavaliers, that they are Papists, and under that name we are made odious to those of the contrary opinion. I am not a Papist, but renounce the Pope with all his dependencies, where the distractions in Religion first sprung up. I might have been thought apt to turn off from this Church to the Romish, but was utterly unsatisfied in their Doctrine in point of Faith, and very much as to their Discipline. The Religion I profess is that which passeth under the name of *Protestant*, though that be rather a name of distinction, then properly essential to Religion: but that Religion found out in the Reformation, purged from all the Errors of *Rome* in the Reign of *Edward* the 6th, practised in the Reign of Queen *Elizabeth*, King *James* and King *Charles*, that blessed Prince deceased; that Religion before it was defaced I am off, which I take to be Christ's Catholick, though not the Roman Catholick Religion.

Then he turned himself to the Executioner: I have no reason to quarrel with thee; thou art not the hand that throws the Stone: I am not of such Estate to be liberal, but here is 3 *l.* for thee, which is all I have; now tell me what I lack.

Executioner. Your hair to be turned up.

Col. Shew me how to fit my self for the Block.

After which, his doublet off, his hair turn'd up, he turned himself about to the people, and prayed a good while before he lay down to the Block. He spake to the people as followeth;

There is none that looks upon me, though many faces, and perhaps different from me in opinion and practice, but hath something of pity in it: And may that mercie that is in your hearts, fall into your own bosomes when you have need of it: And may you never find such a block of sin to stand in the way of your mercy as I have met with.

I beseech you joyn with me in Prayer. Then he prayed, leaning

leaning on the Scaffold, half a quarter of an hour. Having done he had some private conference with Dr. *Swadling*; then he taking his leave of the Sheriff and his friends, kissing them, and saluting him next him, he prepared himself for the Block, kneeling down, said, Let me try the Block, which he did: After casting his eyes, and fixing them very intentively above, he said, When I say, Lord Jesus receive me, Executioner then do thy office; then kissing the Axe, he lay down, and with as much undaunted, yet Christian courage as possibly could be in man, did he expose his Throate to the fatal Axe, his life to the Executioner, and commended his soul into the hands of God, as into the hands of a faithful and merciful creator, through the Meritorious passion of a gratious Redeemer. Saying the forementioned words, his Head was stricken off at one blow.

Vera copia exam.

FINIS.